come from if not from the tenants from whom it has always been customary to collect by monthly, and many of whom are bound by special agreement to pay in such kists.

Section 125.—In this case it would be necessary for the court to serve a notice upon the landlord, intimating that a sale for a money decree had taken place to enable the landlord to make his claim for such arrear of rent as might be due to him.

Section 126.—Ryots are not in the habit of making improvements in this district. If one ryot wished to do so, he could not on account of his lands being mixed up with the lands of other ryots.

Section 140.—According to this section, the holding must be fallow for one year, and the rent lost.

Section 166.—Distraining produce of the holding through the medium of the court would be useless as regards facilitating the collection of arrears, and would only result in the crop being wasted. What is wanted is a summary procedure by which a decree may be obtained, and either the moveable or immoveable property of the defaulter sold without delay.

Section 193.—A short limit should be given as to the time within which the suit must be heard and finally disposed of.

Section 194.—The post office would need to increase its delivery establishment.

Section 198(b).—There being no appeal, is a bad principle. An appeal has a great effect in keeping an officer from taking an one-sided view, or being arbitrary in his judgments.

Sections 211 and 212.—A sale, subject to encumbrances, will never answer, and it will only cause the unnecessary delay of the time allowed for postponement.

Section 217 (3).—No suit should be entertained to set aside a sale, unless the arrear for which the sale took place with costs is first deposited in court.

Dated Hazipore, the 10th May, 1883.

From—J. HARRY OATTS, Esq.,

To—The Collector of Jessore.

With reference to your memorandum of 14th ultimo, I have the honour of submitting my views on the Bengal Tenancy Bill.

I consider the Bill to be a most arbitrary, partial and unjust measure. It will sever all friendly ties between landlords and tenants, and lead to a state of things that must have disastrous results. There is nothing in it that will facilitate the collection of rents, and very little that will do any real good to the ryot. In fact, the Bill seems to have only one object, and that is, to stamp out landlords.

Sections 5 to 13, which relate to khamar and ryoti land, could not be applied to this district without great injustice to the landlords. If the Behar landlords make "persistent efforts" to increase the khamar (paragraph 19 of Statement of Objects and Reasons of the Bill), it is the Eastern Bengal ryot who makes persistent efforts to increase the ryoti by absorbing the khamar. Most of the tenures that are held at cheap rates have been formed in this way. Hence, it would be impossible to define the landlord's khamar without first defining the ryot's land.

Sections 14 to 18.—Because a ryot can shew that he has held his jumma at an unchanged rent for 20 years, or since the permanent settlement, it ought not to be presumed that the quantity of land has remained the same during these periods, unless he holds a pattah from the landlord. The fact is that, although he may have paid the same rent, he has considerably increased the quantity of land by absorption from the khamar. It would greatly benefit the mass of the ryots if permanent ryoti tenures were done away with altogether, and the rents payable by a village more uniformly distributed according to the quantity and quality of land held by each ryot.

Sections 45, 47, 50.—Concerning right of occupancy, contain a most unjust clause,—"notwithstanding any contract to the contrary." The remarks of the Government of India in paragraph 85 of their letter No. 6 of the 21st March 1882, certainly do not apply to this part of the country where the ryot is quite able to look after himself, and make his own terms with his landlord; and it is most unjust to do away with contracts that have been legally made. (The power of the tenants of Eastern Bengal over their landlords, I see, is acknowledged in paragraph 4 of the Statement of Objects and Reasons of the Bill.) Section 50 confers such wholesale rights and privileges on the ryot, that it is a mockery to make use of the expression "landlord;" "rent-collector" would be much more correct.

Sections 59 and 61.—It is decidedly unjust to allow a revenue officer to interfere between a landlord and his tenant, especially when both parties are satisfied.

Section 72.—It is also very unfair, in section 72, to charge either the landlord or the ryot with the cost of preparing tables of rates when such tables are unasked for.

Section 14(2).—It seems very unfair that contracts should be binding on a landlord and not on a ryot.

Section 79.—If a ryot can do what he likes, and exhausts the soil by always sowing the same crops on it, and does nothing to improve it, it is very hard that the ryot should have the power to apply for a reduction of rent "notwithstanding any contract to the contrary."

Section 98.—If rents are collectable from ryots "*not more*" than four times in the year, and may be not so often, how are tenure-holders to pay rents to their superiors to whom they are bound by contract to pay more frequently; in many cases once a month?

Section 140.—Seems to provide that a ryot's holding must lie fallow for one year, and the rent lost before the landlord can do anything. This seems difficult to understand.

Section 198.—Appeals ought not to be abolished. They prevent officers from being one-sided and arbitrary in their decisions.

Dated Sindooree, the 10th May, 1883.

From—W. SHIRREFF, Esq.,

To—The Collector of Jessore.

I have the honor to acknowledge receipt of your communication No. 78 of the 14th ultimo, requesting me to give you my opinion on the proposed Bengal Tenancy Bill. I have gone over the proposed Bill as published in the *Calcutta Gazette* of the 7th March last, and I must say that a more one-sided measure I never saw.

The one great grievance that the landlords had to complain of was the delay and difficulty there is in realizing rents through the courts when such a course has to be adopted; but I do not see that the new Bill gives any particular facilities in that way, and leaves the landlords just as badly off as they were before in that respect. It takes away to a very great extent the rights and privileges of the landlords as hitherto possessed by them, and leaves them mere rent-collectors for the Government, while their responsibility for paying up the Government revenue remains as heretofore.

It seems to me to be a most complicated Act, and that there will be considerable difficulty in working it. I believe it will unsettle the minds of the agrarian population of Bengal, and lead to an immense amount of fresh litigation; and though it seeks to benefit the ryots at the expense of the landlords, yet the real people it will benefit will be the vakeels, mooktears, and hangers-on about the Moonsiff's courts, while the ryots will impoverish themselves by litigation, and a bad feeling will be established between them and their landlords which will go far to nullify any advantages which it is sought to give them by this new measure.

I have to apologize for not having replied to your communication sooner, but press of business at this the sowing time has prevented me doing so sooner.

Dated Narail, the 12th May, 1883

From—MOULVIE SYED MOAZZIM HOSSAIN, KHAN BAHADUR, Judge of the Court of Small Causes, at Narail,

To—The Collector of Jessore.

In acknowledging with thanks your kind letter of the 14th ultimo, I have the honor to state that I had not the remotest idea that I should ever be called upon to give my humble opinion on so important a law regulating the relations between the proprietors of land, subordinate holders of land, and the vast mass of the peasantry, and in which the best talents of the land and the ablest officers of the Government, who have given the subect their most devoted attention, have been engaged in elaborating and introducing the Bill under consideration.

The shortness of the time allowed for the submission of the report precludes the possibility of being able to deal with so vast and important a subject with any appreciable approach to completeness. I shall, however, try to the best of my humble abilities to notice some of the most important points on the subject. At the outset, I must say that, having due regard to all the surrounding circumstances, I fail to see at the present time any urgent necessity for recasting the whole Rent Law which is working so well, instead of only making some amendments useful to both landlords and tenants. The introduction of the present Bill, purporting to make so many novel and radical alterations in the existing law between landlord and tenant, affecting a population of over sixty millions, would be, on one hand, a direct invasion of the rights of the zemindars, and on the other, seriously detrimental to the true interests of the actual cultivators. It is an admitted fact that nothing is more injurious to a person than to go to litigation, which is often ruinous to both parties. The proposed law has so many outlets to litigation, that every ryot will be under the necessity of having recourse to law suits, and observe so many technical formalities for the maintenance and transfer of his rights. He will have to dance attendance before several officers besides the Civil Court, and thereby waste his precious time and hard-earned money which he could have more advantageously employed in the cultivation and improvement of his land which would not only be profitable to himself, but also beneficial to others.

In my humble opinion, the ryots have not yet attained such a stage of advancement as would enable them to reap the benefits and advantages which the framers of the Bill have in view for them. With a hazy and undefined exaggeration of their rights and privileges they would rush into law courts, and get involved in endless litigation to their own ruin and to that of their landlords, but much to the benefit and satisfaction of petty-fogging touters and unscrupulous money-lenders, who at first tempt and draw them into the intricacies of law, and not leave them till they have wheedled them out of their last pie.

I beg to observe that there are many provisions in the Bill which I fully approve, while there are others, which, I am sorry to say, are not only uncalled for, but positively injurious to the interest of all classes.

The Bengal zemindars asked for a simpler procedure for the realization and enhancement of rent. But the present Bill does not give them greater facilities for the purpose than what

they already possess. They do not want more than the share of produce which in 1793 the Government assigned to them. Such cumbrous and expensive mode of enhancement and settlement of rate of rent, value of produce, and restriction of money rent to one-fifth of the produce, are quite uncalled for, and will ultimately prove injurious to both the landholders and tenants.

It will appear from a reference to old records that, formerly there were neither too many evictions nor enhancements. It is the law which opens the door to litigation for both tenants and landlords, and teaches them to try a variety of means to gain their selfish ends. It must be borne in mind that, as a rule, landowners generally are attached to their tenants, and try to secure their goodwill, and live on friendly terms with them. Naturally, they do not, and cannot, like to turn them out of their holdings, for it is an old proverbial saying of the great poet Sadi which may be rendered into—"The tenant is the root of the tree, and the landlord the trunk." If they ever disagree, it is owing to the conduct of objectionable ryots. It appears that the under-mentioned number of evictions and enhancements took place under the orders of a Moonsiff's court, having jurisdiction over an area with a population of 328,231; average enhancement=14, and evictions=6; total 20—a very small number for so large a population.

Having regard to this circumstance, I do not think it desirable for the Government to enact a law, the inevitable effect of which would be to upset the old-established relations between landlords and tenants, respected by the usages and customs of the country and courts of law, and thereby shake the confidence of the people in the acts of the Government, and put the entire population of the country in arms against one another. They are now passing their days happily in peace and quiet, but the effect of the contemplated legislation would be to involve them in chronic and ruinous litigation.

It is, no doubt, the duty of Government to extend benignant protection to all classes of its subjects, but the giving of a right of occupancy to a ryot who never had it before would, instead of improving his condition, rather make it worse by tempting him to run recklessly into debts by mortgaging his occupancy rights. It can easily be proved from enquiries that, of the several classes of ryots, those who cultivate the land appertaining to the village in which they may have resided from a long time, or from generations to generations, naturally have an attachment to such land, and feel anxious for its improvement and prosperity; on the other hand, the case is quite different with ryots who come merely to cultivate the lands, but reside in another village. They are nothing more or less than mere speculators, and, as such, they do not feel that interest in, and that attachment to, the land as are felt by the ryots of the former class.

If the right of occupancy be conferred on the latter class or non resident ryots, the result would be that, without any hesitation, they would mortgage or transfer absolutely their rights and interests to any one, or make *benami* transactions, and thereby prove a source of great trouble and annoyance not only to the zemindar, but also to old resident ryots. I regret to find that the Bill encroaches on the freedom of contract, completion, and established usages which have been respected by all classes in all countries and in all ages.

The right of pre-emption may be considered by some as a compensation for the creation of transferability of occupancy rights, and as a guard against the introduction of objectionable tenants; but as a matter of fact, this right of pre-emption will practically be of little use, considering the large outlay which the landowner will have to make in the shape of purchase-money, &c., without any hope of an adequate return

Most landowners in these days can hardly realize even as much as is necessary for payment of Government revenue and cesses; so they have no means to make purchases of interests of occupancy ryots; consequently, the introduction of objectionable ryots and interference of rival landowners and speculators, to the great annoyance of both the zemindars and the settled ryots of the village, are inevitable.

As regards the ryot himself, the formalities of law he shall have to go through to effect a transfer of a small holding in time of urgent need will put him to so much botheration, that his very object in making the transfer will be frustrated, and he will be obliged to incur unnecessary expenses, and suffer a great deal of trouble in the bargain.

It appears to me very hard that in cases of enhancement of rent, although the landlord may conform to all the rules prescribed by the proposed law, yet he must suffer, but for no fault of his own. Even if the grounds of enhancement of rent be fair and reasonable, but the ryot does not agree to pay the enhanced rent, and the landlord has to sue for ejectment, and gets a decree for it, yet he will have to pay compensation for improvement and a further compensation for disturbance before he can actually eject the tenant, or in other words, the landlord will not be able to gain the benefits of the decree until he deposits in court such sum as compensation for improvements and a further sum as compensation for disturbance equal to ten times the yearly increase of rent, which is indeed excessive and unjust. Here it is the tenant, who fails to comply with the provisions of the law, becomes the gainer; while the landlord is the loser. The landlord has to pay as compensation an amount to the outgoing tenant which he can seldom expect to realize from the new tenant. Suppose the old ryot agreed to pay the enhanced rent demanded, and was allowed to retain his holding, even in that case the landlord could not be sure of realizing from him by way of rent as much as he has to pay as compensation.

CHAPTER II.

Section 6.—The provisions of this section appear to be unreasonable and unjust. Every zemindar should be looked upon as proprietor of his lands, and as such he should be allow-

ed to keep as much lands for his own private use as he requires; but the provisions of this section divest him of that power, and confer on the ryot a title which he never possessed nor demanded. Evidently this section means to convert a ryot into a proprietor.

CHAPTER IV.

Section 41.—An appeal ought to lie from an order under this section.

I should think a provision ought to be made for relinquishment of putni tenures, cases may arise in which the putnidar may not be able to realize even as much rent as he has to pay to the zemindar who may not choose to bring the putni tenure to sale, but insist on attachment and sale of his moveable and other immoveable property, and even apply for arrest of his person.

CHAPTER V.

Sections 45 and 47.—The provisions of these sections are exceedingly objectionable, because a ryot may hold one bigah of land in a village or estate for 11 years, and take 99 more in the twelfth year, and yet he will, at the end of the twelfth year, acquire a right of occupancy in all the 100 bigahs.

Section 49.—This section also is very objectionable. Under section 13, Chapter II, no khamar lands in a certain local area other than that for which a register has been prepared shall become khamar lands, while this section provides accrual of right of occupancy in khamar lands. So the zemindar will suffer double loss: on one hand he is deprived of the right of retaining as much land as he requires for his own use, and on the other, the land which will be recorded as his khamar land will go to the ryot's hands for ever, so that, if a zemindar requires to extend his family residence, make a garden or a new house, he will be at the mercy of his own tenant.

Section 51.—The time of one month given by this section ought to run from the date of service of notice and not from that of filing the same.

Section 56.—The acquisition of right of occupancy by a tenant immediately on his taking from the landlord a jote wherein the former tenant had a right of occupancy is indeed very objectionable. This section does away with the general period of 12 years required for the acquisition of occupancy right.

CHAPTER VI.

Section 59.—This section limits the enhancement to a six annas per rupe, or one-fifth of the estimated average annual value of the gross produce.

No restraint should be put on the freedom of contracts. When contracts entered into by people in other matters are respected by courts of law and sanctioned by the established usages of the country, there is no reason whatever why contracts between proprietors of lands and tenants should be respected only when it binds the zemindar (Section 74 sub-section 2).

Section 62.—Settlements of rate of rents, produce, or value might well be left for determination by Civil Courts.

The procedure as to settlement of rate of rent, &c., is indeed a very cumbrous one, and will cost trouble and expense to both landlords and tenants which the Legislature wants to avoid.

Section 73.—No provision is made if the change in, or in regard to, the land is effected solely by the agency or at the expense of the landlord or his predecessor in interest.

Section 74.—It is strange that the landlord should be bound by his contract not to enhance the rent of a tenant, while the ryot is either not bound by his contract, or bound partially only.

Section 82.—The provisions of this section are hard upon landlord who let the land originally on the understanding that he would always get a certain share of the actual gross produce, instead of which, if the money rent contemplated by this section be less than the value of his (landlord's) share of the produce he becomes a loser for nothing; in fact by commutation of rent in kind into money rent the ryot has to undertake no further risk of cultivation; hence, in fixing money rent, no deduction should be made by the court from the average value of the landlord's share of gross produce, in consideration of the risk of cultivation being taken by the ryot, for the entire risk of cultivation already lies on him under the customary rules of payment in kind, except in rare cases of contract in which the ryot undertakes to meet the landlord's demand, notwithstanding his failure to raise or gather crop on account of drought or inundation, &c.

CHAPTER VII.

The provision of a settled ryot acquiring permanent right in bastu land not included in an occupancy holding, and not losing that right, notwithstanding that he has ceased to be a settled ryot of a particular village or estate to which the bastu land appertains, is extremely hard upon the landlord, and the provision regarding compensation to be awarded to the tenant in cases of ejectment for wilful breach of conditions of written contract is more so. No provision is made as to how long the zemindar is to wait before he can make arrangements about the land left by the absconding ryot.

CHAPTER VIII.

The grounds on which an ordinary ryot may be ejected are so stringent that no landlord can expect to eject a tenant at all; he would never like to pay any compensation for improvements, and a further compensation for disturbance as provided by Section 93.

CHAPTER IX.

The provisions as to fixing instalments in which money rent is payable, and the rules as to receipts and accounts to be given to tenants, and keeping counterparts, &c., are very wholesome improvements upon the old law. I should think a certain fee should be paid to the landlord for the statement of account to be given to the tenant as provided by Section 101, as every landlord having a large property shall have to increase his working staff to meet the ryots' demand under that section, particularly when under clause 2 of Section 102 the landlord shall have to pay penalty for neglect of, and non-compliance with, the provisions of Section 101.

Section 103.—I should think the old rule of tender to the landlord should be retained. The phrase "has reason to believe" is too wide, and every ryot will at random, and at the instigation of suit-mongers and pettyfoggers, take advantage of this section, and never go to his landlord for payment of rent. Section 110 remedies the evil apprehended in clause *a*, Section 103. The zemindar will, as a rule, have to wait for deposits to be made, and in some cases for years together pending the decision of Civil Courts under Section 106, before he can realize even as much as is payable by him as Government revenue; and the result will be that he will be improverished, and his zemindaris will ere long be put up to sale for arrears of Government revenue. I should add that the officers receiving deposits should, in case of deposits made under clauses *b* and *c* of section 103, cause a notice of the receipt of the deposits to be affixed on the tehsil kutchery or where rent is usually paid, and on a conspicuous place in the property; for otherwise it will not be possible for any small shareholder and petty landlord, whose circumstances may not allow them to engage a mooktear solely for the purpose of attending the office of the officers receiving deposits of rents, to get information if deposits have been made, or until the expiration of several months after deposit.

The provisions of appointment of commission for dividing and estimating crops may be made solely applicable to Behar cases. Cases of rent paid by division of the produce are rare in Lower Bengal, and are known as the burga bhag system. In Lower Bengal, the standing rules for suing out the landlord's share as now ought to be left as they are, as the introduction of the rules of division of produce by commission is a mere addition to a lawsuit.

CHAPTER X.

Would work well with certain amendments as suggested below.

The provision to award compensation to ryots for improvements made for their own benefit, and without the landlord's permission, is objectionable. If after certain improvements made by a ryot he is evicted from his holding for his own laches, or relinquishes it of his own accord, or absconds, the tenure is let to another. It may be that the new tenant may find that the improvements by digging a tank or sinking a well, &c., in agricultural land made by former tenant are rather detrimental to his interest, so this new tenant may demand reduction of rents on that ground. As such I should think that no ryot should be allowed any compensation for any improvement made without the landowner's permission.

Section 132.—Should be altogether omitted; people should be left free to enter into any sort of contract they like.

The provisions regarding common management of land are an improvement upon the old law. These provisions will greatly tend to preserve public peace which is often broken by riots, &c., among co-owners, and help the weaker shareholders who are often thrown into a disadvantageous position as regards collection of rents, &c., because of obstructions put in their way by powerful shareholders who often instigate the ryots to withhold payments of rents to the weaker shareholders.

CHAPTERS XI, XII, XIII, AND XIV

would again give rise to unnecessary litigation. The points mentioned in those chapters may be heard and determined in other suits allowed by law, if raised by any party.

CHAPTER XI.

Section 51 (3).—A notice should also be published by beat of drum, and affixed on a conspicuous spot in the property, and another on the tahsil kutchery or where rent is usually paid; for generally the ryots and even the landlords do not get, or have the opportunity to read, the official Gazette.

Section 157.—The time for filing objection should be limited to one month from the date of publication of the jummabundi on the spot, and not from that of its publication in the Gazette.

CHAPTER XIII.

The provisions as to distraint no way facilitate collection of rent, and are not an improvement upon the existing law for realizing rent by a law-suit. The procedure enjoined as to distraint is very cumbrous and expensive to both the tenants and the landowners. In cases of small arrears realizations will scarcely cover the costs, and the result will be that while the tenant will suffer, the landowner will fail to recover the arrears. The distraining officer should, under the rules, be above the rank of a peon.

CHAPTER XIV.

Section 199 (1).—The provisions of this section are an improvement on the old law.

Section 214, clause 3.—The notice should be served by the court of a Moonsiff having jurisdiction in respect of the lands to which the encumbrance relates, as the Moonsiff's court is

always nearer than the Collector's office. It is not clear whether the party affected by the service of notice under clause 3 of the section should have a further remedy in the civil court.

In conclusion, I beg to reiterate with regret that I have not been able to discuss this important subject as fully as it deserves, on account of want of leisure from heavy office work, and to avoid delay in the submission of my report. I have therefore touched briefly upon only a few important and salient points of the Bill.

No. 360, dated Naldanga Rajbati, the 12th May 1883.

From—Babu Pramatha Bhusana Deva Raya.

To—The Collector of Jessore.

With reference to your memorandum No. 786., dated 14th April, I have the honour to submit herewith my opinion on the Bengal Tenancy Bill in the form of a note I have tried to discuss the variout important issues raised therein in a fair and impartial manner.

Note on the Bengal Tenancy Bill of 1883.

CHAPTER I.

1. *Section 3 (3) (4) (5).*—In classifying tenants, an important section of the community has been left out of consideration, and their existence virtually ignored. All over Bengal, there are jotedars (sometimes called gantidars) who are neither ryots, as defined in section 3 (5), nor tenure-holders as defined in section 14. Legislation in matters like this should, in my humble opinion, be constructive and preservative, recognizing the existing elements of the social economy, devising means for their development and prosperity, and eliminating whatever there may be to retard their harmony and growth. But the destructive tendency of legislation in ignoring the existence of tenure-holders generally since 1859 has revolutionized the Bengal society by bringing ruin and poverty upon a very important class of the community, the jotedars.

2. The Rent Law Commission perceived the anomaly of Act X of 1859 in this respect (*vide* their report, paragraphs 13—22), and the pernicious effect it has produced upon the social economy of Bengal is too well known to everyone who has the faintest knowledge of rural Bengal.

3. The present Bill has recognized tenants holding at fixed rents from the time of the permanent settlement; but besides these mokurrardars there is a class of tenure-holders (whose number far outweighs the number of mokurrardars in a given district), who are not ryots within the definition of section 3 (5) of the Bill; neither do they hold land for the purposes of agriculture, horticulture, or pasture, nor did they or their predecessors in interest come into possession of it for such purposes. Whatever their origin, it is pretty well certain that an overwhelming majority of tenure-holders is of this category, and that they constitute an important section of the true aristocracy of this country. To level them down to the status of ryots, and thereby subject them to the payment of enhanced rent at the same rate as provided for ryots, is to sweep them clean from the rural economy of the land. One of the pernicious effects of Act X of 1859 was the ruin of many a family holding tenures of this description. But future legislation, being cognizant of the fact, should carefully guard against committing the same error over again; for the non-recognition of such an important section of the community is neither conducive to the ultimate welfare of the zemindar, nor expedient upon political considerations.

4. This class of jotedars, as it at present exists, consists—

(*a*) Of families of the higher strata of society, owning holdings of various dimensions of, say, from 50 bighas to 5,000 bighas, but not at fixed rents, with under-ryots on the holdings previous to their creation.

(*b*) Of families of the lower strata of society, who, for service rendered, or consideration paid received grants from the zemindar of considerable tracts of land with under-ryots on the holdings previous to their creation. These have advanced a few steps above their original social position.

(*c*) Of families of actual cultivators of land, who, by subletting, have gradually evolved themselves into the status of middlemen. Their social position is yet uncertain, but in the process of social evolution they will in time rise higher up.

5. Now, the difficulty of discovering "any principle of distinction between ryots and tenure-holders, or undertenure-holders, which will hold good universally," should not be the reason why their existence should be ignored in the statute book of the country. Some arbitrary rules should be adopted, and the class of tenants of this description differentiated from the class defined in the Bill as "ryot." To this end the following suggestions are most humbly made:—

Section 3 (3).—For "tenure" write "tenure of the first degree," and provide to the following effect:—

"Tenure of the second decree means a tenure of more than 50 bighas of land not held at fixed rent from the time of the permanent settlement, the holder of which does not derive his profit from the produce of the soil, but from undertenants paying him rent in money, or

a tenure of more than 50 bighas of land not held at fixed rent from the time of the permanent settlement, the holder of which derives one-fourth of his profit from the produce of the soil, and three-fourths from undertenants paying him rent in money."

Similarly, the definition of "ryot" could be so changed that none should be deemed a ryot who does not derive his profit entirely from agriculture, &c., or three-fourths of whose profit does not come from those sources, and one-fourth by subletting.

CHAPTER II.

Section 5 (5).—The necessity of khamar land in a country like India, where agriculture is one of the most important pursuits of people in every grade of life, is obvious. In olden times, even the paramount power had large tracts of land for raising various kinds of staple produce, partly to improve and encourage agriculture, and partly to give employment to the poor and the destitute. This being the natural origin of the institution of private land, all its present evils are due to the creation by legislation of tenants-at-will, and the bestowal of right of occupancy to ryots cultivating or holding land for 12 years. The material prosperity of this country depends largely upon agricultural improvements, and the zemindars, whatever might have been their apathy and ignorance in former times, have, at least some of them, realized the fact, that one of their paramount duties consists in establishing experimental farms upon scientific principles. But this cannot be done unless zemindars have the power, where necessary, to increase their existing stock of khamar lands. I therefore humbly suggest that a provision be made to the effect that, for purposes of agricultural and horticultural improvement, zemindars may increase their existing stock of khamar land.

CHAPTER III.

6. *Section 21 (3).*—For "less than 10 per cent." write "less than 15 per cent." This is suggested with a view to allow a similar margin to the proposed tenure-holders of the second degree.

CHAPTER III.

7. *Section 28 (1).*—This section seems to be quite unnecessary. Moreover, it will have the effect of provoking unnecessary litigation. Under this section, the revenue officer upon receipt of the fee payable under section 27 "shall cause a notice to be served on the landlord, requiring him to register the transfer of succession;" and the landlord shall be "bound to comply forthwith with the requisition contained therein." But the landlord may have very cogent reasons for refusing to register such transfer, and for the matter of that the tenure itself may not be transferable. Litigious tenants may take advantage of this section, and try to hoax the zemindar through the revenue court. The zemindar, in equity, should have an opportunity to show cause why the transfer or succession should not be registered. The landlord's refusal or neglect to register does not involve any imminent danger to the incident of the tenure, nor does it in any way jeopardize the tenure-holder's right or interest. Under such circumstance, I am humbly of opinion that section 32 is quite sufficient to afford relief in the event of the landlord's refusal to register.

CHAPTER V.

8. *Right of occupancy.*—Great misapprehension seems to prevail as to the motive of the zemindar in being too much reluctant to allow any and every class of tenants to acquire the right of occupancy in any land held or cultivated by them. Before the passing of Act X of 1859, there were only two classes of actual cultivators of the soil recognized by the zemindar :—

(*a*) The khoodkhast or resident; and
(*b*) The pykhast or non-resident ryots.

The resident ryot was considered to have a birthright over the lands of his village, and enjoyed all the immunities which subsequent legislation conferred upon the ryot having a right of occupancy; while the non-resident ryot was considered as a mere stranger, having no lien upon the land of the village in which he did not reside, but allowed to hold and cultivate so long as there would arise no demand for the land on the part of the residents of the village. And this the zemindars did, I am humbly of opinion, upon principles of sound policy tending to the real and permanent good of the village to which the land appertained. Nothing can more effectually improve the condition of the resident cultivators and render them happy by living in a thriving community of peaceful and laborious members than the beneficial custom of allowing them precedence over strangers for earning their livelihood from the lands of the village in which they permanently reside. In an agricultural country like Bengal, the children of the village should have an indefeasible right over the lands of the village. The pykhast right must succumb under the superior right of the khoodkhast ryot. Hence originated the customary law of not allowing any permanent right to the stranger ryot. The word "khoodkhast," as used in the regulations, is synonymous with "resident." Had the framers of Act X of 1859 conferred rights of occupancy on the resident ryots, much of the censure mercilessly heaped from all sides on the head of the innocent zemindar, much of the ruin and poverty among the agricultural community, and much of the ill success of the Act in this respect might have been averted. But the then Legislature committed, it seems to me, a mistake by accepting the dictum of the revenue authorities of the North-Western Provinces, that "residence was not always a condition of occupancy," and ushering an arbitrary rule of occupancy in this country contrary to custom and tradition.

9. Experience having amply demonstrated the mischievous effects of this canon of the law of 1859, the Legislature is now anxious to amend it But the measures embodied in the Bill in this respect seem, in my humble opinion, to be as arbitrary as the old law, and not only does it tend to complicate more hopelessly the already complicated relations between the landlord and the tenant, but it may (I speak this with much diffidence) interfere with the material prosperity of rural village communities.

10. An estate is a factitious aggregation of villages, often miles distant from each other, made by the Government upon fiscal considerations. There is seldom any community of interest and feeling among people of different villages in one estate. Under the circumstance it is not very just to give undue advantage to the people of village X who have held land in their own village for 12 years over the people of village Y in respect to the lands of village Z, which the people of X never held before, simply because X and Z are villages in the same estate, although X is four miles distant from Z and Y quarter of a mile. On the contrary, it would tend to cement the bonds of sympathy between the people of two contiguous villages, irrespective of the consideration whether they appertain to the same estate or not, if the inhabitants of the one are allowed occupancy rights in respect of the lands of the other village. Besides, what the learned Law Member apprehends regarding the status of new comers (paragraph 31 of the "Statement of Objects and Reasons," *below*) has a surer chance of coming to pass under the proposed law. Immigration would be discouraged and every encouragement given to bring in new ryots from neighbouring villages *not* lying in the same estate with a view to keep as many holdings unencumbered by occupancy rights as practicable. This would interfere seriously with the welfare of resident ryots, who would be debarred the chance of increasing their holdings. From the zemindar's point of view, too, the provisions of Sections 45 (1) and 49 are objectionable. The zemindar is bound by self-interest, equity, and good conscience to secure the right of property to the resident ryots of a village, the effect of which, on the side of the ryot, is prosperity; on the side of the zemindar, facility of realizing rent from a prosperous tenantry But why should the zemindar be equally indulgent to a stranger, simply because he happens to have cultivated lands for 12 years in a remote part of the estate? It may be argued that an estate being a concrete holding of the zemindar, all its component villages should be regarded by him as so many members of a single body; but I have shown above, that decentralization of the rights of occupancy is likely to interfere with the material prosperity of the resident ryots. The duty of the zemindar ought to be, instead of trying to give nourishment at random to all the branches of the tree, to centralize benefits upon village units which will have the ultimate effect of securing prosperity and happiness to all the villages.

11. There is one other fact which should not be forgotten in this connection. All the villages in a single estate may not be in the khas possession of the zemindar. As is generally the case, he has distributed some villages in putni, some villages in mourashi, and some other villages in jotes; with the agricultural population of which he has virtually nothing whatever to do; and the agriculturists of which villages have no sympathy with the zemindar. This being so, it does not seem to be reasonable that a ryot from such a village, virtually a stranger, should enjoy the same rights and immunities as the resident ryot; while a resident ryot of 11 years 11 months and 29 days standing is a tenant-at-will, a stranger from another village becomes at once an occupancy ryot, simply because he held for 12 years lands in one, two, twelve, or twenty-four villages in the same estate.

12. These provisions might, I am humbly of opinion, abet the ryot's natural improvidence and turn him into a habitual nomad. Let me illustrate my position. An occupancy ryot, according to the Bill, being perfectly at liberty to sell or encumber his holding, avails himself of an early opportunity to raise money by one or other of the means, and merrily does he fritter away the money as long as the last farthing remains. He then, one morning, with bag and baggage, wife and children, with a view to try his fortune in greener fields and pastures new, repairs to another village in the same estate, and there takes a jumma from the zemindar, putnidar, or any permanent tenure-holder. There he plays the same game, and again pursues his gipsy life; or if he is a wise man, he adopts this mode of life for a few years, and carefully keeping his purse tight, becomes a man of fortune. But the majority of ryots being proverbially improvident, it is more likely that with the facilities afforded them, they would be more improvident and *unsettled*.

13. This state of things would also seriously affect the zemindar. What with the power to transfer occupancy rights and the facility to acquire it in the same estate, a feverish desire to convert occupancy holdings into ready money will get possession of the ignorant and improvident ryots! They would notify their desire for sale to the zemindar, who would be assailed with such notifications from every quarter of his zemindari. Now, if the zemindar refuses to buy, it is almost certain either the money-lender, or the planter, or his adversary, or any other objectionable person may come in against his will and his interest. If he purchases, his purse will be too much drained upon, but as long as the holdings are not advantageously settled, the zemindar will suffer a double loss, loss of interest of the investment, and loss of rents. And in nine cases out of ten, the investment would be a dead loss for his purchasing by consideration what he had otherwise the right to get.

14. Under all these circumstances, I humbly suggest the definition of "settled ryot" in Section 45 (1) may be recast on the following principle, *viz.*—(1) every person who has permanent residence in a village, and who, for a period of three years, whether before or after

the commencement of this Act, has continuously held as a ryot, ryoti land situate in that village shall, notwithstanding the land so held by him at different times during that period may have been different, be deemed to have become, on the expiration of that period, a settled ryot of that village; or (2) in the case of a non-resident ryot, every such ryot who shall have held land in a village in which he is not permanently domiciled for a period of 12 years shall have a right of occupancy in the land so held by him. This, I humbly believe, would reconcile matters by reconciling traditional custom of the country with the dictum of the law of 1859, which for a quarter of century has been the custom in vogue.

15. *Section 47.*—Should be amended according to the above suggestions.

Section 50 (e).—The following amendment is suggested with reference to paragraph 4 of this note: "He may sublet not more than a fourth part of his holding."

16. *Section 59.*—I seriously protest against any interference with free and voluntary dealing. Land, like everything else, has a market value, depending upon demand and necessity, and it is feared that the Government, in its paternal solicitude for the welfare of the ryots, may unnecessarily impose a hardship upon the zemindar who is the most loyal and devoted vassal of her Imperial majesty. The registering officer is only concerned to see whether the ryot is entering into the contract as a free agent; and if he is satisfied that it is so, he should not have the power to inquire into the matters stated in sub-section 2. What objection can there be to the ryot's voluntary agreement to pay to his landlord what he thinks he can bear to part with? The same issue is joined to Section 61 (2).

17. *Sections 59 (2), 61 (2), 64, 75 (d).*—And other sections fixing the limit of money rent payable by settled ryot. This appears to be an infringement of the principle upon which the permanent settlement was made with the zemindar, and its consequence would be ruinous to him. By the permanent settlement, the Government's share of the gross produce was made over to the zeminder (*vide* preamble of Regulation XIX of 1793, and Justice Campbell's remarks in the Great Rent Case, B. L. R. Suppl., vol. 251). Both under the Hindu and the Mahomedan Governments, the cultivator's share of the produce was one-half of the gross produce. When latterly the Mahomedan Government preferred taking one-fourth, it was simply because the State wanted to save itself from the trouble and inconvenience of taking rent in kind. Now, the Government having transferred to the zemindar the right to a certain proportion of the produce of every bigah held by the ryot, and that proportion being half, both under the Hindu and the Mahomedan rule, it is inexplicable how the State can now depart from this principle, established by custom during centuries and ages?

18. By the permanent settlement, the zemindars were rack-rented. "We have seen," says Mr. Westland in his report on the district of Jessore, page 98, "one of the great zemindar families of the district lose all their estates, one after another, through no fault of their own, but from causes *directly referable to the action of Government.* Firstly, the assessment fixed at the permanent settlement was too high, &c." Again: "when the British came, they began by increasing the revenue by the 1772 assessment, and while they made the zemindar more than ever dependent for his revenue upon the excessive exercise of his power, they set it before them as one of the objects of their administration to limit and control that very exercise of power on which the zemindar had to depend" (page 84). The consolidation of cesses; police, chowkidari, poolbundi, and similar other expenses; canoongoes' allowances, zemindari pension, &c., &c., with the revenue brought the revenue practically to more than half the value of the gross produce which the State was entitled to receive. Hence all the old zemindars, notably the ancient house I have the honour to represent, were impoverished and ruined. If this was the condition which the zemindars had been reduced to in 1793 from causes "directly referable to the Government," the effect of fixing the limit of money rent by one-fifth of the estimated average annual value of the gross produce of the land would be equally, if not more, disastrous. I therefore propose that instead of one-fifth, three-eighth of estimated average annual value of the gross produce should be the zemindar's share in money rent.

19. With reference to enhancement of rent of tenures of the second degree proposed in paragraph 5 of this note, I beg to suggest that the rent of such tenures should be liable to be enhanced upon the same grounds and under the same procedure as the rent of occupancy holdings, with this exception, that a tenure-holder of this class shall be entitled to a profit not more than 15 per cent. and not less than 5 per cent. of the balance which remains after deducting from the gross rents payable to him the expense of collecting those rents, and where he has any portion of his holding in his own cultivation, the rent of such lands should be calculated for the purpose of assessment with reference to the table of rates then prevailing.

20. *Section 76.*—Such a circumscription does not seem to be at all necessary in the face of definite rules whereby the zemindar would not be allowed to get more than a fixed proportion of the gross produce in kind or money. On the other hand, it would be an injustice done to the zemindar in cases in which occupancy ryots pay him a nominal rent.

CHAPTER VIII.

21. With regard to the settlement of rent between the ordinary ryot and his landlord, Legislature should leave them quite unhampered by any rule or law. Restrictions such as are proposed in Section 119, specially with reference to the rent of this class of ryots, are, in my humble opinion, productive of infinite mischief, both to the landlord and to the tenant, for the benefit of which latter class the Government are so very solicitous. The zemindar to whom,

by the permanent settlement, the Government surrendered, among other things, "the right to profit by future increase of cultivation, and the cultivation of more valuable articles of produce," should not now be bound hand and foot to exercise that right in a way prejudicial to his interest. Further injustice seems to have been done to the landlord by providing in section 93 (2) (7) that the landlord shall be bound to pay to the ryot whom he wishes to eject a compensation for disturbance equal to ten times the yearly increase demanded. This, in other words, implies that the landlord will have to purchase *by full consideration* the benefit which he has the right to get. It is not clear why an *un*settled ryot should get so large a compensation for disturbance which affects him very little. If he loses a holding here by refusing to pay what his landlord demands, he has a sure chance of getting a holding there. If the ryot is entitled to any compensation for being compelled to surrender against his will, the landlord must also be entitled to similar compensation when the ryot relinquishes his holding without the landlord's consent. But Sections 139 and 140 give no such benefit to the landlord. If the ryot suffers in the one case, the zemindar, too, suffers in the other; for, in a majority of cases, it does no frequently happen that the vacancy made by a ryot is filled up at once.

22. *Sections 97—99.*—"Much of the harassment, to which the ryots are subjected, is said to arise from the number of instalments in which the rents are payable, and to remedy this, the Board is empowered *** to fix the instalments ****." But in point of fact the number of instalments prevalent in each pergunnah from time immemorial has direct reference to the reaping times in the year, as will appear from the following table taken from Mr. J. Westland's report on the district of Jessore, Appendix B (agricultural statistics):—

	Rice crop			Date-sugar.	Cocoanut	Areca-nut	Mustard	Mugun	Kulai	Barley	Til	Betel-pepper.	Pan-vines	Indigo	Sugarcane	Turmeric.	Jute
	Aman	Aus	Boro														
Reaping time.	January.																
	November, December, January.																
	August, September.																
				March, April													
				November to February.													
				Rainy season.													
				...													
				February, March.													
				February, March.													
				February, March													
				February, March													
				November, July.													
				November, December													
				...													
				June to August.													
				December.													
				February.													
				August.													

23. During ten months of the year, the ryot reaps his harvest in the field. There are some parts of the district, no doubt, where the winter crop is scantily grown, but then they have varieties of rice crop to do with for at least seven months of the year. Instalments have accordingly been fixed by tacit mutual agreement from time out of memory. Far from being a source of harassment to the ryot, it is a source of great relief to him, inasmuch as under the customary system of instalments he has to pay a certain portion of his yearly rent whenever he gets some produce. Had not this been the case, the ryot ignorant, improvident, and careless, would squander away his money, and when a heavy *kist* would come in, would hardly be able to meet it from his present savings. Instead of being salutary to the ryot, the proposed adridgement of all existing *kists* into four would, it is apprehended, be a fruitful source of his ruin. On the other hand, the zemindar's ruin would be inevitable. Bound by an inexorable law to pay the Government due punctually in four *kists*, having the arduous duty to collect his rent, rupee by rupee, from individual ryots; having no power to compel the ryot to pay; obliged to pay a heavy stamp duty for seeking relief in the civil courts, whose dilatoriness is proverbial, the zemindar's position is really very precarious. If in the face of all these difficulties, an insuperable obstacle (such as has been proposed in these sections) is thrown in the way of his realizing rent at harvest times, the fate of the zemindar would be sealed for ever. Let the Government give him the same facility to recover rent from his tenants as they (the Government) have in recovering their revenue from the zemindar, and the zemindar would not raise his voice against the proposal. Why throw everything *topsy turvy*; why subvert customs sanctified by time and agreed to by the ryot? It would be pernicious both to the ryot and the zemindar if Legislature interfered with custom and contracts not repugnant to custom in the matter of instalments of rent, and other matter as well.

24. *Section 102.*—The forms of receipt and statement of account provided in Sections 100 and 101 being very elaborate, it will be necessary for the zemindar to maintain extra establishment for keeping them. And as these are intended solely for the benefit of the tenant, it is but reasonable that he should pay some fees, if not for the receipt, at any rate for the statement of account which the zemindar is not bound in equity to deliver *gratis*.

25. In conclusion, I beg to suggest, that the provisions of Chapter III—D (of the registration of transfers, &c., be made applicable to occupancy holdings and tenures of the second decree. The Legislature fears that it would be a matter of great difficulty to bring

home to persons of the ryot class the details of "such a system." But I beg most humbly to point out that the system is not at all new, and that the ryots are used to it in this country from time immemorial. The prevalent custom is that a transfer of a tenure or holding of whatever class (save non-transferable holdings) pays a certain fee to the landlord, whereupon the landlord registers his name. This being the long established custom, the Legislature should not, I humbly submit, put a stop to it upon technical or sentimental grounds. The landlord must always know who is the person from whom he is to receive rent; otherwise his collections would come to a dead-lock. In this view I am supported by the Rent Commission (*vide* paragraphs 116 to 121 of their report).

Dated the 28th May 1883.

From—Babu Shyamadhaba Roy, Deputy Collector,

To—The Collector of Jessore.

I have the honour to submit the following report on the *Bengal Tenancy Bill.*

1. In discussing the provisions of this Bill, there are, in my opinion, three things to be taken into consideration:—

(*a*) Whether there is any necessity of changing the existing Rent Law (Act X of 1859).

(*b*) Whether the provisions of the new Bill in any way infringe the Regulation of 1793.

(*c*) Whether the present Bill is based on equitable principles both as regards the ryot and the zemindar.

2. I do not think there can be any doubt that Act X of 1859, as a whole, has failed to give satisfaction either to the zemindar or to the ryot, and this dissatisfaction was felt at in early period. I find that within three or four years of the passing of the Rent Law, Sir Barnes Peacock suggested its amendment. In later years also, successive Lieutenant-Governors, as well as the Rent Commission, advocated a change in the law. Even the zemindars' champion, Babu Kristo Dass Pal, c.s.i. (Hon'ble), on the occasion of the agrarian disturbances at Pubna in 1876 (?), complained of the indefiniteness of the principles of the Rent Law, and in the course of the debate on the Bill at the last session of the Legislative Council, he did not deny that some fresh legislation on the subject was necessary. Without enlarging any further on this subject, it may be summed up that the cry for a change in the law came from two quarters. The zemindars wanted to have greater facilities for the enhancement and recovery of rent, and the ryots desired to attain "the three Fs," to quote Major Baring, *viz*, fixity of tenure, fair rent, and free sale. In order to redress these grievances as far as possible that the present Bill is framed.

3. As regards the second point, I am humbly of opinion that the Bill is in no way an infraction of the vested rights of the zemindars, and does not involve a breach of the contract made in 1793 between Lord Cornwallis and the zemindars. I have not been able to read all the literature on this subject, but I think a reference to the Regulation of 1793 itself will be quite enough to show most conclusively, even to the most superficial reader, that the imputation of breach of faith is utterly groundless. The text of Regulation I of 1793 (clause 1, Section 8) reserves to Government full powers to interfere "for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil." This is also fully supported by other contemporaneous official literature on the subject. The Court of Directors, writing to Lord Cornwallis in 1792, mentions, amongst other things, that "we wish to have it distinctly understood that while we confirm to the landholders the possession of the districts which they now hold and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the ryots or the sums paid by them, with any view of an addition of revenue to ourselves we expressly reserve the right which belongs to us as sovereigns of *interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots from being improperly disturbed in their possession or loaded with unwarrantable exactions.*" Then, again, later on, the Court of Directors expressed themselves as follows on the subject:—"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced * * * You will in a particular manner be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary, for the protection of the ryots and subordinate landholders, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right as sovereigns of being the guardians and protectors of every class of persons living under our Government." On the face of these emphatic declarations, it is absurd to deny that power to legislate whenever it was necessary to define the relations between the zemindars and the ryots was expressly reserved at the time the permanent settlement was made.

4. I now come to the third and the last point. It is necessary to refer all the sections of the new Bill, as most of them are the same as those in Act X of 1859. I shall therefore confine myself to the salient points regarding some of the sections which have been newly introduced into the present Rent Bill. Most of them are very important, and deserve the most serious consideration at the hands of those who are interested in the welfare of the ryots. I shall commence with Chapter II of the Bill, as Chapter I merely contains preliminary matters. In Chapter II, as far as I can see, the only section which is important is Section 6. The object of this section is to prevent zemindars from "getting

into their own hands as large an amount of ryoti land as possible and convert it into khamar land." To meet the exceptional case of Behar, where there is an unusually large quantity of *khamar* or *zeraat* land, provisions have been made in the Bill (Sections 7 to 13) for making a complete survey and record of the existing khamar land. This will remove the possibility of all future disputes regarding the matter.

5. The next chapter (Chapter III) deals with tenure-holders generally, and the changes introduced do not seem to be important. Chapter IV refers to putni tenure. The law regarding these tenures has been left substantially unchanged. I therefore at once pass over to Chapter V. This is a very important chapter, as it deals with the question of the acquisition of the occupancy right and of the general incidents of that right. The zemindars and their friends have protested most vehemently against the sections in this chapter. Without going into the more complicated portion of the question regarding *right of occupancy*, it is sufficient for our present purposes to say that Act X of 1859 has failed to define the conditions requisite to constitute a *right of occupancy* It will be further seen that Act X of 1859 did not make any provision by which new comers might acquire rights of occupancy. This is a matter which is absolutely necessary for the prosperity of the agricultural classes in this country. It will be seen that under the present law it is almost impossible for a new ryot to obtain the right of occupancy, as the zemindar can easily prevent it by the "simple device of shifting the tenant from one holding to another before the period of 12 years has run out." To remedy this, it has been provided in Section 45 that the acquisition of the status of the "settled ryot" will depend not on the holding of the one and the same plot of land for 12 years, but on the holding of any ryoti land (whether the same or not) in the same village or estate whether before or after the passing of the Act. The Section 47 is equally important. It will be seen by a reference to these sections that a right of occupancy is acquired by a ryot holding ryoti land "notwithstanding any contract to the contrary." I have quoted the sections* of this chapter in the margin, where old contracts are not upheld according to your orders. It is these sections chiefly at which Mr. Tweedie, Manager, Porahattie concern, seems to be very much alarmed. I am sorry I cannot agree with him at all in this matter. If it be the intention of the Government to see that their humane object in framing this law is not frustrated by any contract by which the ryot is run out of his status, the binding power of these illegal contracts should be dispensed with. I need hardly say it is out of the question that the Government can prevent a ryot making what contract he likes, but all what the Government say is, that in certain cases the courts will not give effect to such contracts. I think this is perfectly fair. If Mr. Tweedie will refer to Sir S. Bayley's speech in the Council, he will find that one of the causes of the Pubna riot was, to quote Sir Steuart's words, "the endeavour on the part of the landlords to force from the ryots *kabuliats* which, besides incorporating illegal abwabs in the rents provided for the landlord changing arbitrarily the legal standard of measurement, and for his ejecting the ryot in case of the latter having the misfortune to quarrel with him." I could multiply instances if I chose. But I am sure everyone taking a dispassionate view of the matter will agree with me in thinking that Government should not allow their courts "to treat such documents made in direct contravention of the law as contracts made in equal terms between the parties." In leaving this question I can do no better than quote the language of the Government of India in one of their letters on the subject. They observed that "such is the power of the zemindars, so numerous and effective are the means possessed by them for inducing the ryots to accept agreements which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purposes of the Bill would be in our belief to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed, and in this conclusion we have the support not only of the Bengal Government, but also of the almost unanimous opinions of Bengal officers."

* Chapter V, Sections 45, 47 and 50.

6. In my opinion the sections about the occupancy ryots are very wholesome. It will be seen that mere squatters and nomads are effectually excluded from the acquisition of this great and important privilege.

7. The Bill then goes on to provide for the "transferability of the ryoti tenures," and for "the limitations to enhancement." As I am hard pressed for time—the report being due to-day—I regret I cannot make my observations at length on these points. I shall remain satisfied by merely saying that in dealing with these two important questions the Government has tried its best to look to the interest of the landlord as well as that of the ryot.

8 As regards the facilities which the present Bill offers to the landlord for the recovery of rents and for their enhancement, I beg to observe that owing to the inherent difficulties of the subject, an entirely satisfactory solution of the problem has not been arrived at. From the debates at the Council, it appears that the matter will receive further consideration at the hands of the members of the select committee.

9. The preparation of a table of rates is another interesting and novel feature of this Bill. To me it seems to be a gigantic work and hardly feasible; nor can I understand how such a table can be accurate in a country where the quality of land changes so much. However, as this is a tentative measure, the procedure will be improved as it is worked.

10. In conclusion, I beg to say that my sympathies are entirely with the ryots, and I have therefore hailed this measure with great delight. What Bengal wants, in the language of Sir A. Eden, is a substantial peasantry, free from debt and able to bear the stress of hard times. The agricultural community in this country forms the backbone of the vast and

multitudinous population of Bengal. Never was a truer sentiment uttered when one of England's greatest living orators said that the "nation dwells in the cottage."

11. The above, I am fully aware, is hardly worth the name of a report, considering the importance of the subject it treats. My knowledge of land tenures of this country is very limited, and I have therefore utterly failed to do justice to this subject.

No. 651G. dated Krishnaghur, the 7th June 1883.

From—W. V G TAYLER, Esq., Collector of Nuddea.

To—The Commissioner, Presidency Division.

With reference to your circular No. 9R—L, dated 24th April last, I have the honour to report that among all whom I have personally consulted, the concensus of opinion is against the Bill, as being one-sided, and having a tendency to lower the status of the zemindar. The sub-divisional officers, with the exception of that of Ranaghat, have been unable, for press of other duties, to consider the Bill, and have not therefore favoured me with an expression of their opinion. They have forwarded, however, the written opinions of the few among the several consulted, who have responded to their call, and these I now beg to submit for your perusal.

2. My own opinion of the Bill is, that it will have the effect of putting a stop to existing abuses on the part of the zemindar, and affords to the zemindar a speedy means for the recovery of arrears. At the same time I consider that portions of it are, as it now stands, unsuited to this district, that they deprive, unnecessarily, the zemindars of privileges which they have long been enjoying, and to which they are entitled, without necessarily conferring on the old ryots at least any corresponding advantage, and only benefitting new comers who have no claims on the estate. On the other hand, some of the benefits conferred on the ryots appear to me of a very doubtful nature, notably the power of transfer of occupancy rights by sale.

3. The sections which seem to me to call for special remark are the following:—

Sections 5 and 6.—These appear to me to be inapplicable to this district, in which the utbandi system prevails to a very great extent. Lands let out on this system have hitherto been considered to belong exclusively to landlords as their private property, and landlords, other than proprietors, invariably retain such lands as khas. Under the Bill such lands will become ryoti, and it seems questionable whether privileges so long enjoyed, and from which no injury to the ryots accrued, should be taken away. Planters too frequently let out their khas lands to ryots for a season or two—a practice which is advantageous to the ryots as well as themselves, but which must be put a stop to unless the Bill is changed.

Section 25.—No right of pre-emption is given under this section. I think this should be allowed as in the case of occupancy rights.

Section 45.—The utbandi system, which only in this and one or two other districts will make almost every ryot a settled ryot of the village, and hence under Section 47, almost every ryot will have a right of occupancy in the lands he may be holding since March. It cannot be the intention of the Bill to take advantage of a special system such as this, and hence I consider some special proviso is needed to meet the special circumstances of this district.

Section 50.—The right of transfer by sale seems a very doubtful privilege. The greater number of ryots are greatly indebted, and are so improvident, as a rule, that to stave off present urgent demands on their purse, they may sell their rights and thereby ruin themselves. It seems to me, that among the poorer ryots at any rate, the greatest safeguard against absolute ruin would be the fact, that they had their lands to fall back upon from which they could not be deprived, either by their own, or the action of others, so long as they paid due attention thereto.

Section 56.—In a great measure nullifies the benefits conferred by the previous sections. A landlord can certainly keep out land-jobbers and others who are not likely to improve the lands, but, notwithstanding that he pays for the right of occupancy, he is forced to give it up again, if he lets out the lands to ryots. I could better understand this if it were a certainty, that he would let it to old ryots of the village, but he may desire to lease them to new comers, or to retain them for lease under the utbandi system; and I cannot see why they should be debarred from carrying out such a wish, without being obliged to give a right of occupancy at the same time.

Section 93.—I presume the court has to decide whether the claim for enhancement is just, fair, and in accordance to the law, before ejecting the ryot. In that case, it seems hard that landlords should have to grant compensation for disturbance which would never have occurred but for the obstinate rejection of such just claims by the ryot.

Sections 139 and 140.—The commonest mode of surrender and abandonment of lands is by flight: in such cases, from whence is the landlord to get his rents for the following year.

4. No mention is made in the Bill whether lands thus surrendered will continue to be ryoti, or will be considered as the exclusive private property of the landlord. It seems to me that all lands which come in any way in the hands of the zemindars should be liable to be dealt with by the zemindar in the way he thinks best. The ryot to whom the lands belonged cannot be injured by such lands being declared "khamar," and next to him, it seems to me the landlord should be considered and not the new-comers on those lands.

No. 208, dated Ranaghat, the 20th May 1883.

From—Babu Ram Churn Ghose, Sub-Divisional Officer of Ranaghat,
To—The Collector of Nuddea.

In reply to your No. 449G., dated 16th instant, I beg to submit herewith the following report.

Almost all the respectable zemindars of the sub-division were written to for an expression of their opinions on the Tenancy Bill. The only two reports received up to date from Babus Girindro Nath Mukerji and Kalika Nund Roy, are submitted herewith in original

I have very attentively gone through the Bill. The provisions are quite full. All necessary safeguards against the illegal exactions of the zemindars and harassing enhancement suits have been provided in it.

The reports of the zemindars show that slightest encroachments on their rights have been objected to.

All that I venture to remark is that more than sufficient privileges have been granted to the tenants. It would have met the present requirements adequately if there had been only a simple mode of speedy recovery of arrears due prescribed, and alterations made to protect the tenantry from illegal exactions, and *abwabs*, and harassing enhancements.

While the privilege of creating occupancy tenures has been made easily feasible, the outcome of it, I apprehend, will be the creation of multiplicity of intermediate undertenures, which in the long run would prove detrimental to the interests of actual cultivators of the soil.

It will prove to be of doubtful expediency, and, I am afraid, will foster litigation, and not establish that good feeling which prevailed between the tenants and lords which have been disturbed since the operation of Act X of 1859.

The Bill is a very complete one, and I am unable to offer any suggestions.

Dated Subarnopur, the 7th May 1883.

From—Babu Kalikanund Roy,
To—The Deputy Collector of Ranaghat.

In compliance with your serial No. 115, dated 3rd instant, to copy of letter from the Secretary to the Board of Revenue, I have the honour to send the report on the Bengal Tenancy Bill; but in doing so, I beg to premise that I have not had the occasion to read the fifteen chapters of the Bill, as I am not a subscriber to the Gazette referred to in the Secretary's letter. Imperfect as my knowledge of the Bill is, and the time allowed, *viz.*, two days, however, may be too short for such an important subject, I shall, however, be glad if the views contained in the report coincide with that of yours. If we differ, I beg to request you will be kind enough to submit the report to the Secretary to the Board of Revenue in order that I may have the satisfaction to learn that my report will have a chance of hearing.

The scope of the Rent Bill may be summed up as follows:—

(1.) That it does not remove some of the clauses of the present Rent Law which trench upon the property rights of the landlords, and such as are considered obnoxious.

(2.) That it confers on tenants certain rights and privileges which they do not enjoy at present.

(3.) That the standard of enhancement proposed to be fixed is not uniform, and the limit assigned in certain cases is arbitrary.

(4.) That the compensation allowed to tenants-at-will is inequitable, and not customary in India.

(5.) Speedy recovery of arrears of rents.

1. The sections which interfere with the proprietory rights of the landlord are:—

Section IV of Rent Act VIII of 1869.—This section, though evidently based on the law of *prescription*, is opposed to Section LII, Regulation VIII of 1793, and considering the relation that subsisted between the landlord and tenant formerly it is wholly inapplicable to cases of rent. While it confers no benefits on the tillers of the soil, it has created a class of men whom the law never intended. (14, W. R., p. 165.)

Sections V and VI.—There has been a great deal of contention as to who are the persons that should enjoy right of occupancy; whether the right should be conferred on *khood kasta kudmi* (hereditary resident), or simply *khood kasta* ryots. The class of ryots described in paragraph 2, Section LX, Regulation VIII of 1793, are the latter. It has been also a subject of great dispute whether by ryots are meant cultivators or holders of land, or both. There is no such definition in the regulation referred to above; we therefore safely conclude that if the right is given to *khood kasta* cultivator for that portion of land which he cultivates, the ends of justice will be sufficiently met. It serves no purpose to vest a tenant with the right over that quantity of land the improvement in which he is not directly concerned, but then which merely forms part of his holding, unless it be the intention to lower the value of the proprietory rights of the landlord.

The Sections which are considered obnoxious are the following:—

Section XXI.—Although Government at the time of the permanent settlement has fixed, the payment of its land revenue by instalments for the proprietors, it has left the latter under

a great disadvantage to realize their dues from their tenants by the same mode of instalment. The established usage is a myth, and is never proved, or if proved, it is never considered satisfactory. We think that every tenant be made to pay his rents by monthly instalments though no interest shall run until the tenant shall have failed to pay his quarterly dues before a week the same is payable by his superior landlord.

Section XXXI.—Deposits of rents, although made on oath that the same were tendered at the mal kutchery of the landlord, are not *bonâ fide* transactions. The tenants now-a-days think it a degradation to go to the landlord's place, avail of the benefit of the law, and make the deposit. The law on false oath is never enforced in such cases. The limitation, *viz.*, six months, fixed for claims for further balance seems to us quite arbitrary, considering that similar claims of abatement for rent and all others are barred after three years.

Proviso of section LXVIII.—While the sharer in a joint, undivided estate is made to attach first the moveable property of the judgment-debtor (Section LXIV), he is debarred from distraining the same description of property under this proviso. Ninety-nine out of every hundred estates in Lower Bengal are joint, undivided, in which no division of land has taken place; consequently the provisions of the distraint clauses are not availed of. The procedure in respect to suits by sharers of joint estates, *mutatis mutandis*, may be made applicable to sharers who are in receipt of their rents separately.

2. Already the impetus given to the undertenure by making it heritable and transferable has contributed to the rise in value of that description of property much above the value of the proprietory rights of the landlord. And if further concessions be made, the value of one will continue to rise, while that of other will fall, as one might anticipate, in either arithmetical or geometrical progression to such an extent that Government may eventually find it difficult to satisfy its own demand from the sale-proceeds of such estates in case they are brought to the hammer for arrears. The wholesome principle laid down in Section 52, Regulation VIII of 1793, and in the decision of the High Court (20, W. R., page 139) should not be overlooked, or power be given to turn arable land into an orchard or homestead or offices of manufactory, &c., without the express sanction of the landlord (12, W. R., page 495; 18, W. R., page 19). Such power may be advantageous to the individual tenants, but positively injure other tenants who may have lands adjoining. The landlords will suffer without receiving any adequate benefits. That such power is opposed to native idea of wealth needs not be shown. According to the native idea, paddy is wealth (dhana dhanya). Whatever contributes to the increase of that wealth, contributes to the well-being of native society. The saving of written contracts under section 7 is one which should not be dispensed with.

There can be no doubt that the value of undertenure will be greatly enhanced at the expense of the proprietory rights of the landlord, but no one who has carefully read the preamble to Regulation XLIV of 1793, will deny that the object of the Legislature has never been so.

It is therefore sufficient for all purposes that *khood kasta* cultivator of 12 years' standing to have right of occupancy in the land he cultivates; that the right be made heritable, provided successors follow the same mode of occupation; the right be made transferable: but as the Bill provides, the landlord is to have the right of pre-emption.

3. Considering the different rates of rent which prevail in the same village and in the same district, and in some which are paid in kind, the standard, *viz.*, one-fifth of the gross produce, is not an unreasonable one. But the limit fixed for new engagements seems to us quite arbitrary and unsuited to India, where the people are generally indolent, and low rate of rent never induces a cultivator to exert himself to derive the utmost the land could fetch. It would therefore be indirectly encouraging indolence. In Nuddea, where comparatively with Hooghly and Burdwan, very low rate of rent prevails, the agriculturists are content with a single crop which requires no great labor, and is easily obtained.

4. *Ashu Dhanya.*—The tenants-at-will are quite aware of the nature of contract they enter into. So far as our own experience goes, no improvement of any kind is made by tenants of very long standing unless they are indemnified by the annual product. Even when they apprehend any loss they relinquish the lands. If compensation, such as is proposed, be once introduced in India, landlords may hereafter claim compensation from their tenants when lands are relinquished by them, and which may lie fallow.

5. The procedure adopted in the Rent Bill will greatly help the landlords in realizing their rents without having recourse to summary procedure.

Dated Ula, the 8th May 1883.

From—Babu Girindra Nath Mukerjee,

To—The Deputy Magistrate of Ranaghat.

In reply to your favour No 138, dated the 3rd instant last, I beg to record the following as my deliberate opinion in respect of the Bengal Tenancy Bill. Hope you will kindly condescend to go through it, correcting and altering whatever may seem to you frivolous or incoherent, and apprise me of it in time that I may take a lesson.

THE BENGAL TENANCY BILL.

Before entering into any discussion of the Bill, I beg to state at length the relative position of the landlord and tenant as now obtains in these parts. Men quite unacquainted with

the habits and mode of life of the peasant class are seen to come forward with loud and boisterous denunciation of landlord and the mahajan. Looking at facts from a distance, their young raw hearts become affected at seeing a poor ryot scantily clad and scarcely provided with the bare necessaries of life, and they at once conclude that the landlord and the mahajan are to blame for it. If they will please throw off a little of their lethargy and take the trouble to sift the cause to its very bottom, they will be convinced that it is the ryot who is to blame. In days gone by, when the soil was more fertile, and produce quite abundant, ryots could be seen in very prosperous and affluent circumstances, their granaries full of grains, and their cow-sh[illegible] teeming with healthy animals, though the grains then fetched but half their present price. This state of things has quite vanished; and what is the cause of it? Not the oppression, extortion, or the illegal exactions of the landlord, or the all-absorbing greed of the mahajan certainly, but the idle and improvident habits of the ryot, his utter disregard to agricultural improvements, and his extreme willingness to depend on his mahajan for the payment of his rents and supply of even the necessaries of life. He would not take into head the idea of manuring or irrigating his lands, though the means to it were ample and available. His only care seems to be simply to keep his mahajan well satisfied about his earnestness to pay off his debts, by showing that he has broken up his lands for purposes of cultivation. The mahajan with this guarantee in his favour undertakes to keep him up and afloat up to harvest time, and lends him money and paddy in the hope of recovering something of his old dues over and above that let out in the current year. Now imagine his chagrin, when at the harvest time, he comes to know that owing to the partial failure of rain and the comparative exhaustedness of the fertility of the soil, the produce of the year cannot be expected to realize even so much as half his dues of the current year. His remedy now lies in a court of justice, and what awaits him there? Loss, heavy unmitigated loss! The law protects the ryot. His single plough and bare pair of bullocks have been declared to be such on which the mahajan cannot fix his clutches His home is no property that can be attached in execution of a decree, and his lands are primarily liable for the rents due by him. The little that had been saved by eluding the mahajan's vigilance had long been converted into paltry ornaments, and given over to his wife or daughter. The mahajan, with no other solace except a prolonged sigh and a sincere wish of ruin to the man who has given him so much trouble, discontinues his transactions with him. The rents of his (ryot's) lands have already begun to fall into arrears, and the landlord is now brought on the stage The ryot is called upon to pay, but he pleads inability, simply because he has no mahajan. The landlord waits for three consecutive years, and being hampered in diverse ways in realizing his dues from the ryot, he ultimately goes to court, where after endless postponements, and illegal and unrecoverable expenses he is favoured with a decree. The costs of the original suit, together with those of the execution proceedings, augment the demand to four times its primary amount. The ryot who could not at first pay the simple rent due can never be expected to meet this heavy demand. He hides his movables so effectually that the attaching peon gives a return of no movables, and the landlord is obliged to proceed against his lands. He becomes thus deprived of his agricultural life, and his hand-and-mouth sort of life brought on by his own faults is made the stand-point whence the declamators vilify the landlord. There can be no remedy to this state of things so long as the ryot does not appreciate the advantages and importance of an easy, independent, agricultural life; no amount of protective legislation can better the condition of the ryot, and too much court-interference will only hasten on his ruin. However circumscribed and hemmed-in might become the landlord's rights under a legislative enactment, something must remain to him, and the enforcement of that something in a court of justice, where myriads are waiting to prey upon the poor ryot, would bring on misery and destitution to the latter. In olden times, a defaulting ryot would have been brought over to his landlord's kutchery, where after piteous cries and cunning evasions he could get release with some corporal punishment perhaps; thus with a slight bodily inconvenience he could contrive to save his home and his means of living. But now, protected from any such punishment by the criminal law, he becomes utterly ruined in defending himself. The greatest oppression that a landlord can now-a-days inflict on his tenant is to sue him in a court of justice.

With these preliminary observations I beg to proceed to consider the Bill. First of all, I shall beg leave to ask, is the Bill wanted? To this question I should return an answer in the negative. The system of agriculture in vogue needs substantial improvement; else no good outturn can be expected. The same lands are being cultivated continuously for the last hundred years, and have consequently lost much of their productiveness. Experience has shewn that improvements calculated to secure a good harvest do not pay even the interest of the capital laid out. Under this state of things, ordinary ryots are seen to give up agricultural pursuits, and embrace the more lucrative calling of selling labour dear. The price of labour has increased fourfold, and the inducement to pursue an unprofitable agricultural life has greatly diminished. Moreover, the agitation given birth to by the passing of Act X of 1859 is gradually subsiding, and the landlord and tenant are, after long and protracted struggles, becoming reconciled to the provisions of the Act. It is not at all politic to disturb the present state of peace and equanimity. Creation of new rights in the tenant will certainly be strongly and strenuously opposed by the landlord, and the sequel of the proposed measure would be setting one class against the other anew. The second question I would ask, is the Bill, as framed, calculated to ameliorate the condition of the ryots in any perceptible way. I must confess that I cannot answer this question even in the affirmative. The Bill simply attempts at conferring certain rights on the ryot, but it does not contemplate securing them to him. He is too often required to appear before court against his landlord, and it is more than certain that what may be

pastime to the one will be rain to the other. I intend to notice all these particulars as I proceed with the different sections of the Bill.

Section 17 is not easy to be understood. If the scope of the section be to declare that separation or amalgamation of lands and consequent decrease or increase of rent will not operate as a change of rent within the 20 years immediately preceding, there is not much to be said against it. If it means that mere separation from or amalgamation to a holding will not entitle a landlord to enhance his rent, it is objectionable.

Section 18 (a).—If it is a fact that the rent of a certain tenure has undergone two or more enhancements since the permanent settlement, though there is no special custom to that effect in the district, is it equitable to debar the landlord from claiming enhancement when the land is shewn capable of affording it?

Sections 14 to 20 confer on a certain class of ryots some privileges which will turn them into middlemen. They may prove as oppressive to their under-tenants as their landlords had been to them. It is nowise bettering the position of the actual cultivators. I do not see what may be the good of this policy of creating a middle class who will entail on the poor cultivator a double burden. The first landlord has secured certain profit at the time of letting his lands, and the new landlord, that is, the middleman, will not let his lands to the cultivators without keeping a good margin for himself.

Sections 21 to 24 award to the tenure-holder a high percentage of profit. His collection expenses are already taken into account, and he ought not to be allowed very much more than that. It is sufficient that he does not pay anything from his own pocket, and has ample means to keep himself and family in easy circumstances. The percentage recommended by the section is feared to provide him with means and leisure which he may be tempted to employ to the oppression of his ryots.

Section 28.—This is quite uncalled for. Section 32 provides for cases where the landlord refuses or neglects to register, so that Section 28 can be dispensed with. The less the court's interference the better.

Section 30.—A fee at least must be made payable for registration of a third person's name. The purchasers in this as well as in Section 29 are in the same predicament, and should, in equity, be made equally liable to a fee.

Sections 45 and 47.—A settled ryot, who had been cultivating or holding bromhotor or lakhraj lands in a village or estate for 11 years continuously, is seen in possession of some ryoti land pertaining to the village or estate during the last year which does not expire before the 2nd March 1883. Shall this man acquire occupancy right in that land? It is absurd that a man having had so small a concern with the land should be considered to have acquired a right in such land. Considering the present deplorable state of agriculture, it is desirable to confer on the ryots, that is, the actual cultivators, certain rights which may induce them, to hold to land, and introduce improvements in the system of cultivation. Though the idle habits of the tenant class do not warrant such a conclusion, still I would not grudge a trial, especially when my rulers would have it. But then I should here state a principle on which the landlords, in recognizing any rights in the tenant, are entitled to a certain premium. It is invariably the custom and practice everywhere that when the landlord transfers any of his own rights unto any of his tenants, or a third person, he gets something as consideration. Now under the proposed law some rights which but for the Act had been vested in the landlord, are wrested away from him and conferred on some third person It is but meet and just that this third person should pay to his landlord something as premium. If, however, the tenant is unable to make any immediate payment, it should be made payable by instalments bearing interest not above one per cent. What I have said of occupancy rights is equally applicable to the tenure casses.

Section 50(c).—Occupancy rights should be made to accrue in respect of lands which a ryot would absolutely require for cultivation. When once the right has accrued to a person, he shall not be divested of it so long as he continues to cultivate the lands. If in any year he neglects to cultivate any portion of the lands, he loses his occupancy rights in that portion, provided that no physical disability has overtaken him during or before the year. Any settled ryot taking that portion for purposes of agriculture will have occupancy right in respect of it. Creation of a middle class should be very much discouraged. The less their number the more good to the cultivator.

Section 51.—Court interference without need. Serve the notice personally on the landlord, or if there be any reason to believe that the landlord will not recognize service of notice, it can be served by means of registered letters.

This and the four following sections deal with the right of pre-emption of the landlord in cases of sales, gift, or bequest. Much has been made of this provision as if something quite new and unheard-of is being secured to the landlord. But let us see what it really means. It simply means nothing more than this, that the landlord shall buy up a thing which originally belonged to him, but had been given away to a third person without getting his consent or giving him any consideration in return. All that I have said here and elsewhere respecting premiums and considerations applies only in cases of zemindars or actual proprietors. Tenure-holders are landlords only under the present Bill. But if tenure-holders are to be taken into account, the premium or consideration should be divided between him and his landlord according to the proportion of their rents.

Section 70.—Considering the variations in the gross produce and the value thereof, no table can be allowed to hold for more than three years.

Section 73 (c).—It would not be fair that the proprietor or the holder of a superior right

should equally share with his inferior the difference obtained. Tenure-holders as landlords are under this section entitled to enhancement when the prepared table of rates shews the ryots' rate to be below it, without being made liable to any such obligation under similar circumstances. Since the tenure-holder acquires his right without paying any consideration, it is equitable that he should share with landlord the profit obtained without his agency.

Section 75 (*c*).—The above remarks apply here equally well.

Section 78.—Suppose a rent enhanced a year or two before the proposed Act comes into force. If this enhanced rent is still less than the rate shewn in the table of rates prepared under the proposed law, shall not the landlord be entitled to enhancement, simply because 10 years have not elapsed since the rent was last time enhanced?

Section 93 (*b*).—Why the landlord is thus saddled with a compensation amount? He merely seeks to oust a tenant-at-will for his refusing to pay a just demand. If such a provision be allowed to prevail, no ryot will agree to pay the enhanced rent.

Section 96 (*2*).—The percentage is very high.

Section 100 (*d*).—It is desirable to have the following words added, *viz.*, the quantity and quality of the lands comprised in the holding. It may obviate many difficulties in a subsequent suit.

Section 101.—The landlord should be allowed a small fee for each statement furnished. Unless extra amlahs were kept, these businesses could not be rightly and punctually performed. (*a*) The quality and quantity of land in the holding.

Section 103 (*a*).—Mere belief should not be made the criterion for deposit. Where a tenant believes that his rents would not be accepted and receipt granted therefor; he should at least serve a notice on his landlord, say, by registered letter, that unless his rents were accepted within ten or fifteen days from the date of the notice, he would deposit the amount in the court.

Section 110.—There must be conclusive proof that there was not a reasonable or probable cause. Bearing in mind the strong predilections of courts in favour of the ryots, this section seems to be dangerous on the whole.

Section 128.—This section empowers an ordinary ryot to erect on his holding dwelling houses and suitable out-offices without the permission of his landlord. This is not just. The ordinary ryot has no sort of right in the soil, and the improvement does not in any way benefit the land. If he is ejected, he is entitled to compensation; but anyone stepping into his shoes and standing in no need of such an improvement would not take the holding at his rent. This is conferring too much privilege on an ordinary ryot. Improvements not absolutely necessary for the purposes of the tenancy should be made subject to the landlord's permission.

Section 133.—In the statement of Objects and Reasons the desirability of empowering a landlord to measure all lands in his estate, whether lakraj or otherwise, has been expressly stated. But the section seems to exclude lakraj lands from its operation. This is anomalous.

Section 135.—Some punishment must be inflicted on the obstructing tenant; else he would not be induced to desist.

Section 142.—The appointment of a manager is made dependent on certain conditions. I should recommend it to be made compulsory in all cases of co-sharers. It will bring infinite relief to the ryot, while it will materially benefit the landlord.

Section 167.—Landlords who collect their rents by means of agents, *i.e.*, naibs and gomastahs, should be exempted from any obligation to verify a plaint. The verification by the naib or gomastah well cognizant of the facts stated in the plaint in such cases and duly empowered on that behalf should be accepted. Though Section 189 provides something of the sort, the law is not explicit enough.

Section 168.—The procedure is feared to become too much dilatory. Every documentary evidence should be filed along with the application, and the deputation to distrain should be immediately ordered to issue. If the ryot has any objection, he can come in after the distraint, but before sale. Otherwise if he becomes apprised of any attempt at distraint, he will fail to take advantage of the delay by promptly gathering and hiding securely his crops in some safe place.

Section 195.—It is not stated anywhere in the Bill in what sort of cases the court should grant leave to file a written statement. It is desirable not to give to the court any discretion and to make the rule absolute. If, however, the court is satisfied that the defendant has just and reasonable cause of complaint, it may require him to deposit the amount claimed, together with the probable cost, before being allowed to file a written statement. When the register, record of rights, table of rates, receipts, and statements are required to come into play, no serious injustice may be feared in case the ryot is debarred from filing a written statement. If the case is decided against the defendant, the deposit shall be at once made over to the plaintiff, and thus an execution proceeding can be dispensed with.

In conclusion, I shall beg to notice that neither in the case of a tenure nor in that of occupancy right any provision is made in the Bill when more than one person succeeds to the tenure or the occupancy holding, and partition it among themselves. The landlords' cherista contains the name of the one man who was a tenure-holder. His successor in interest has been made liable to pay a fee, but when there are more than one successor, no provision is made as whether each and all shall be liable to a similar fee when they wish their names to be separately registered according to their respective shares.

Memorandum of Opinion on the new Tenancy Bill by RAI JADU NAUTH, ROY BAHADOOR, *dated 31st May 1883.*

This Bill being the outcome of a settled purpose on the part of the Government to ameliorate the condition of the ryots by improving their status, and taking away certain rights which the zemindars from the time of the permanent settlement understood to have belonged to them, it is needless to enter into any discussions or comment upon the principles of the Bill. I shall, therefore, address myself chiefly to some of the prominent changes in the relation between the landlords and tenants, and how they are likely to affect the interests of the party concerned.

The word *khamar* in this district is known to mean such lands only as are kept for storage of crops just before threshing, and it is not known in the sense the term is used in the Bill. Perhaps in former times zemindars used to compel ryots to store their crops in lands belonging to them as private lands, and did not allow them to take away the grains without paying the rents. Besides this, I am not aware of any zemindar or landholder, keeping any records or paper shewing the areas of khamar lands in their villages; it would therefore be not a matter of little difficulty to ascertain the area of khamar lands as distinct from the ryoti lands in the way proposed by the Bill, in fact, no distinction between khamar and ryoti lands had been observed since a very long time in our districts, and so many conflicting rights and interests have, during this long period, accrued to one party or the other, that, far from the executive authorities being able to ascertain this question, it would take the Civil Court a full generation to decide them

Nothing has prevented the zemindars for this long time to convert into khamar or private lands any unoccupied ryoti land, nor was any claim set up by a ryot for lease of any land left vacant by a fellow-ryot; on the other hand, the zemindar has always let out lands of his villages without observing any distinction between khamar and ryoti lands The zemindars of this district know of two kinds of land only, the *zami*, or lands held by tenants, and *lokshan*, or lands not held by any tenants. Under this latter description of lands is included all uncultivable, uncultivated jungle lands, village roads, lands the zemindar might retain for his own private use, as well as lands that were at one time leased out to tenants, but has since reverted to *lokshan* lands, having been deserted by the tenants. The well-known *utbandi* tenures of the Nuddea district are formed out of these *lokshan* lands. Now, the definition given in the Bill of *khamar* lands will not include all these descriptions of lands, consequently it is doubtful whether the *lokshan* lands of the zemindars will be called *khamar* or ryoti lands. The definition of *khamar* land, therefore, in my humble opinion, ought to be clearer and wider, so as to include all the so-called *lokshan* lands retained to be let out as the zemindar pleases

Sections 15—20.—In suits for enhancement of rent, the present rule of 20 years' presumpton is, that a ryot must shew payment of uniform rent for a period of 20 years immediately preceding the time of the enhancement, whereas the new Bill proposes to introduce by allowing uniform payment of rent to be proved for *any* period of 20 years. Now, the effect of this change would be to give the ryot an undue advantage over the zemindars in *more* successfully contesting his just right of enhancing the rent, for it will be easier for the ryots to fabricate *dakhilas* so old as not to require of their being proved in law courts, and as those alleged to have signed them might not be alive, it will be impossible for zemindars to rebut the presumption either by witnesses or by *jumma-wasilbaki* papers, the latter being not always available in consequence of the frequent change of zemindars by sale, gift, or otherwise.

Section 14 enacts that tenures held at fixed rent since permanent settlement is not liable to enhancement; and section 18 provides for the enhancement of such tenures when not so held, but the changeableness of the rate of rent is to be proved by the landholders; a mere allegation that the rent is changeable will help little or nothing in getting the rate changed. The provision in Section 18, with regard to further proof in respect of the custom of the district, is vague in itself, and will naturally give rise to the question as to what the landholder should have to prove. This section may, further, tempt ordinary and other ryots to set up equal claims with the tenure-holders, described in Section 14, in the absence of pottahs and kubulyuts, the interchange of which, until very lately, was not much in practice. In this respect, therefore, the present law may be allowed to stand as it is.

In sub-section 3 of Section 21, the words "gross rents payable to him" are objectionable inasmuch as they may not include the rents of the lands which the tenure-holder holds for his own private use.

Section 25 makes all permanent tenures *saleable*, but no provision has been made for preventing from their being purchased by inimically-disposed rival zemindars. The principles underlying the right of pre-emption with regard to occupancy tenures should be the guide in cases of permanent tenures also, and the right of pre-emption ought to be given in these tenures.

With regard to occupancy rights, so much has been said and discussed, that it is unnecessary here to repeat the arguments advanced against the most objectionable sections of the Bill. I mean sections 45 and 47. It needs only be observed that the freedom of contract taken away by these and many other sections of the Bill is of essential necessity in all relations between the landholders and the tenants. The various advantages derivable from the land depend not only upon the soil, but upon numerous conditions of the soil, its situation, its drainage, its scenery, fertility, &c., &c., combining to complicate the question as to how to ascertain the value of the land for the purpose of settling the rent payable in respect of it. Upon a rough calculation, therefore, of any one of the numerous conditions—say, for instance, the gross produce—it will be simply an arbitrary measure to make any attempt to fix the rate of rent payable by the ryots.

The ryot to whom the land is to be let out is likely to prove the best judge of what would suit his convenience, and notwithstanding all his shortcomings—inferiority of intellect, an absence of education—the ryot is most sensibly alive to his interests, and well understands the advantages he derives in lieu of the rents he pays for the same. It would therefore not be unwise to leave to the ryots to enter into agreements in the way they choose; and any attempt to take away from them and the landlords the right of contracting legally (though out of law), would be inconsistent with the broad liberal policy of the present as well as of the past Governments. In discussing upon matters of the local self-government scheme, the Government has recognized the possibility of honest and intelligent votes being given by far a greater portion of the ordinary run of people, and upon the face of such recognition in respect of difficult matters of policy it will be quite inconsistent on the part of the Government to deny the possibility of a current appreciation by the ryots of the nature of the contracts they enter into in far easier relations with their landlords. The idea therefore to make the law imperative, and to prevent the ryots from contracting out of law, is not in harmony with the age and principles of Government.

Having made these observations in respect of some of the prominent changes, as they appear to me, from the stand-point of my own experience as a zemindar, I shall conclude this note with one word more. The agreement entered into between the zemindars on the one hand and Lord Cornwalis' Government on the other, is of the nature of a voidable contract. The zemindars understood themselves absolute proprietors of the soil in quite a different sense from that intended by the Government. Their conduct, and the way in which they have been dealing with their proprietary rights since the permanent settlement, are sufficient for my purpose to say that the zemindars did not for a moment consider that they were made *proprietors* in such limited sense of the term as explained by Mr. Ilbert. If from the rent literature of the time of the permanent settlement it appears that the weight of evidence is in favour of the contention that the Government has reserved the right of legislating in the manner in which it now exercises, I should possibly have no claim to be heard in what I have said upon some of the provisions of the new Bill. If that is so, I should rather say that it would rescind the permanent settlement altogether, and reconvert the zemindars to tehsildars, or convert him to a pensioner, for then we might look for peace in the land.

Dated Katdaha, the 12th May 1883.

From—Babu Bedhoo Bhoosun Bose,

To—The Officer in Charge of the Sub-division, Koushtea.

With reference to your notice, dated the 2nd instant, I most respectfully submit to your information my views on Rent Bill embodied in the enclosure.

I further beg to state that Babu Bepin Behari Bose, to whom the same notice was also given, has been confined to bed from a severe attack of rheumatism since the month of January last.

Views on Rent Bill.

A certain portion of produce or of profit from land which its occupier pays to its owner for its use, is called rent.

A mouza, or a certain large area of land, whose name is entered into the Government land register, is called an estate.

The rent that is paid to the Government for an estate by its proprietor is called revenue.

A holding is a small piece of land, or is composed of several such pieces, for the use of which rent is paid

The occupier of land who pays rent is called a tenant. When the tenant dwells in his own holding or in the village where that holding lies, he is called a khood kasta tenant.

The owner of land who receives rent is called a landlord.

So the term tenant includes all, from the actual cultivator or the occupier of the land to estate proprietor, in their capacity of paying rent. And the term landlord includes all the various proprietors of an estate, from the zemindar to *miadi* ijardar, and also all the various proprietors of a holding, from the mokraridar to the lowest korfadar, in their capacity of receiving rent.

Since the time the views of the Legislature in any Rent Bill appeared in any public print, the landlord begins to guard his interest; while the ignorance and the poverty of the tenant keep him back even from knowing what has been laid down for his good.

On the occasion of breaking out into a difference, the landlord, thinking himself as the paramount power, generally takes law into his hands, and continues to do so till his tenants are goaded to form a powerful combination. Then he begins to be paid in the same coins as he used to do them heretofore. Yet, he is not without hopes to crush them down if he succeeds to get some fellows to uphold his version in court, as he fails not to assail them on all the various sections and clauses of the Rent Law which he finds there are in his favour. This course, though slow, is sure and safest of all. But when he is unable to produce any evidence, he is sure to be deprived by tenants in combination of his just dues.

The tenant, on the other hand, during the time of his broil with his landlord, has the disadvantages of his field being neglected, and those of being advised and led either by an unscrupulous village scribbler, or by a wily mooktear, but neither of whom feels the least compunction to rob him right and left.

Again, when the landlords' myrmidons or the tenants' combination headmen become unscrupulous, the peaceful, though reluctant, are dragged into a strong compact to commit or aid perjury and other crimes by the threats of injuries to be inflicted to their property, persons, and family. These threats are turned into actions when the reluctant become resolute. The injuries thus brought on are rather augmented than mitigated by the present system of administration of justice, since the difficulties and the troubles that meet the injured in the way are :—

(1) The want of money for the stamps or court-fees required.

(2) The incapability of procuring the required evidence when it is under the sole control of their influential opponent, who can, at all risks, dare say anything in open court against a tyrant landlord, or a ruffian tenant, to bring him into grief.

(3) The loss of time and such moneys as are not allowed by law during the various stages of law-suit, not only in the court of first instance, but in those two of the appellate ones. This loss is so enormous that it entices the affluent to adopt the conducting of bad suits as one of the means to ruin their antagonist.

(4) The failure of justice from absence of such evidence as the court requires.

(5) The want of means to pay the decreed costs consequent on such a failure.

(6) The execution of costs decree through all its processes, which add to the decreed sum an amount equal to several times of its actual value.

(7) Multiplication of crimes when one is let off unconvicted. The Government, having arranged to meet the expenses of the administration with proceeds from stamps or court-fees, gains by these quarrels and loses by their absence. But quite contrary should be the case. India being an agricultural country, the land disputes which have reduced it to wretchedness and penury must at once be got rid of, and measures of peace and prosperity are to be admitted in their stead to make the Government powerful as any under the sun.

To remove the grievances alluded to, and bring without loss to any all the several interests in land, from the Government to the cultivator, into a harmonious whole, should be the sole object of the new Rent Bill if any real reform is intended by it. To replace a few obnoxious clauses in the existing Rent Laws by some salutory ones without any radical change in the administration would merely contribute to fan the dying embers of the litigation, enhance the stamp revenue, and make the court's file cumbrous without the desired effect.

The points that require reforms in the Rent Bill are :—

(1) To uphold the contracts between the landlord and tenant.

Whether written, verbal, or implied, the valid ones are to be respected, and one-sided ones rejected, and thus not to allow either the landlord or the tenant to encroach on the just rights and privileges of the other under the plea of time, &c. As for example, it is not reasonable to create an occupancy right to a temporarily settled or uthandi land on occupying it for a certain period of time, or to oust a resident or a khood kasta tenant if he fails to complete his that period; and also to permit the tenant to appropriate the wood of the fruit trees which were in existence before he was admitted into his holding, or to deprive him totally of it when the trees are planted by himself.

(2) To develop the resources of land.

This is the hinge around which the incomes of all its interested parties turn. The work is now left to the cultivator whose poverty and ignorance render him incapable to bestow on it any improvement whatever. With a view to aid him in the matter the Government, as the paramount landlord, should make an advance to the intermediate ones, to be refunded at the close of the year with interest at the rate not exceeding 6 per cent. per annum. The intermediate ones should in their turn advance the amount to the cultivator, to be refunded after each harvest with interest at the rate not exceeding 12 per cent. per annum. Besides this the cultivator should be permitted to secure any kind of tenure for the improvement of his fields on payment of proper costs. These and similar other deeds towards the development of the soil should entitle the landlord to the enhancement of his tenant's rent.

(3) To adjust rent.

The average of ten years' net income from each sort of land in a holding is to be ascertained. Of such income (that is, income after deducting from the gross produce all sorts of expenses except the Government revenue) ($\frac{1}{2}$) half is due to the proprietor of the estate and ($\frac{3}{8}$) three-eighths in equal portions to the intermediate tenant landlords as the rent to be annually paid for ten years at the least, and the remaining ($\frac{1}{8}$) one-eighth to the cultivator at his profit. The reasons for such divisions are, that the estate proprietor has to pay the Government revenue from his half (which is equal to nearly ($\frac{1}{4}$) one-fourth of the gross produce), and the remainder he has to share with the others of his class according to their mutual contract, as the tenant landlords are to divide among themselves their ($\frac{3}{8}$) three eighths. Whereas the cultivator, his ($\frac{1}{8}$) one-eighth none to part with; besides he gets all the expenses of his cultivation, including his own labour which would cover, at some crops, ($\frac{1}{2}$) half and, at others, more than half of the gross produce. So where the tenant holds his land direct from the estate proprietor, and cultivates himself, he gets ($\frac{1}{2}$) half of the net income and the whole expense which equals sometimes ($\frac{3}{4}$) three-fourths, sometimes more than that of the gross produce. The rent should be left as it is if it is not enhanced by the above rule. An annual return of the average produce and expense of each crop in a village prepared by its panchayets, tenants, and landlord together; in case of difference by the canoongoe or by the sub-deputy, and tested by the sub-divisional officer, if preserved in a sub-divisional office, would help the adjustment of rent without difficulty.

According to the principle laid down, above (¼) one-fourth of the wood: of fruit trees planted by the tenant is due to the landlord unless the latter relinquishes his right by a tenure.

4. To ascertain the time of paying rents.

Rent should be due after each harvest. But the amount should never exceed what might be claimed by that time according to the prevailing instalment. A corresponding grace should be conferred on the landlords with respect to their payment of Government revenue as is done on the occasion of drought and famine.

5. To facilitate the collection of rent.

In every village the panchayet should prepare a list of undisputed rents in the presence of the landlords and the tenants A copy of such list should be submitted to the sub-divisional officer. The tenant should not take the proceeds of his fields till his undisputed rent, cesses, and rent decree and advance, if any, are paid in cash or kind. But if the tenant thinks it convenient, he may with the knowledge of the punchayet and landlord keep for a month at the most a quantity of the proceeds deposited with a third party adequate to meet the dues from him. If from want of adequate productions any sum remains unsatisfied, it should be realized from his other properties in the following year by legal processes.

6. To protect a tenant from the Small Cause Court decree.

The money-lender takes advantage of his debtor's indigence to extort from him an exorbitant interest, generally amounting to 37½ per cent. per annum. Therefore the decree in question should neither affect his person nor his holding, but the yields of his lands that remain after the payment of his rent, cesses, or advance if any, and also the residue of the sale money of his holding when it is sold on a rent decree.

7. To make the tenant's right transferable.

If he be protected from the Small Cause Court decree as stated above, his right should be transferable as he is understood to spare neither labour nor money to improve his land. The right of pre-emption should lie with the landlord as any transfer without his consent is not the general practice.

8. To confer on the tenant the blessings of law and good government.

The existing obstacles are :—

1. The court-fees.
2. The other heavy expenses and troubles attending a case in its different stages of progress from the court of first instance up to the final court of appeal.
3. The absence from the fields during the enormous length of time generally occupied by a case till its final decision.

If a cess imposed on those who are likely to be benefitted by law takes the place of court-fees to maintain the machinery of administration, the first obstacle might be removed without any loss to Government. This cess will likewise decrease in proportion as the fines imposed on the aggressors in the shape of costs will increase. If two copies of plaints are made on plain paper, and one of them is submitted to the Judge by post, registered, and another to him by the police through the panchayets. If summonses and all other processes of law are served through the police by the panchayets and chowkidars. If the services of pleaders are utilized as paid arbiters.

If those among them nominated by the contending parties are allowed to settle all of their disputes on the spot. If in difficult and important cases the arbitration is presided over by the Judge himself. If private investigation is held before taking the evidence. If the witnesses are made to account for their disagreement and coincide their version with the natural sequences of fact. If in case of difference among the arbiters a reference with due remarks is made to the courts composed of the judicial officers of the sub-division. If intricate questions of law are referred to a similar court in the district, and on their difference to the Honourable High Court. If fine in the shape of cost is imposed on the aggressor to an amount adequate to deter him from further interference. And if protections from criminal aggression are similarly bestowed on by the superintendence of the efficient police and the supervision of the sub-divisional officer.

The second and third obstacles will be removed, and not only the favoured few, but all the people of the country will enjoy the benefits of law and good government, and advance under peace towards wealth and prosperity which will bring on all the improvements in the country, as well as make the Government as firm and powerful as ever.

Dated Kishnagur, the 20th May 1883.

From—Babu Prasanna Chunder Roy,

To—Babu Rakhal Dass Mukerjee, Deputy Collector of Chooadangah.

In compliance with your memorandum No. 60, dated the 18th April 1883, endorsed on a copy of the letter No. 351A, dated the 29th March 1883, from the Secretary to the Board of Revenue, to the Commissioner of the Presidency Division, I have the honour to submit herewith a few remarks on the Bengal Tenancy Bill.

It is stated in the Statement of Objects and Reasons that when the permanent settlement was effected, Government did not part with its "right as sovereigns of being the guardians and protectors of every class of persons living under it," but reserved the power of enacting "regulations for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil," and that the zemindars were called upon to "shew implicit obedience to all regulations which had been or might be prescribed by Government concerning the rents

of the ryots and the collections from under-tenants and agents of every description, as well as from all other persons whatever." It is accordingly argued that apart from the inherent right of Government "to regulate from time to time as occasion might require for the protection of the inferior occupants of the soil," these provisions of the permanent settlement regulations also empower it to enact laws in that direction. The first question that arises is whether Government has got this power. It would be presumptuous on my part to pass any opinion definitely on so grave a question. But it seems to my humble judgment that the proposition that Government has an unlimited power to pass any law for fixing the rates of rent payable by a ryot, or for defining his status can hardly be defended. Supposing that the permanent settlement of an estate was effected after taking into calculation a particular rate of rent then payable by the ryots, will the Government be justified in fixing a *lower* rate of rent, however necessary it may be from an administrative point of view, without either making a proportional reduction in the revenue assessed on the estate, or giving compensation to the owner thereof? The same remark would apply if any alteration in the law is made by which the ryots' status would be different from what it was at the time of the permanent settlement. I am perfectly aware that the proposed law does not contemplate any such alteration at all, but nevertheless the cases supposed shew that it would be unjust to claim such a right in every case. If the state of things that existed in 1793 could be accurately ascertained at the present time, and customs now prevailing in agricultural communities were in most cases not at variance with the same, any legislation based thereon could not properly be objected to by the zemindars. But when this cannot be done, and a law is proposed the provisions of which are at variance with the *existing* state of things, and which are alleged to be mainly based on the general principles of equity that *should* govern the lands of an agricultural population, the zemindars, I humbly submit, have every right to complain when from some cause or other as certain state of things has been allowed to exist for nearly a century, and thousands and thousands of estates have changed hands on the belief that it would not be disturbed in any way, and when the passing of the Acts of 1859 and 1869 could not but strengthen this belief, it would not be equitable to the zemindars to pass a law entirely opposed to the same. The changes proposed are so great that in many cases they would surprise the ryots equally with their landlords. The provision regarding the acquiring of a right of occupancy by a settled ryot by his "holding as a ryot" a piece of ryoti land for even a single day, and which he would be entitled to dispose of whenever he wishes to do so, and some of the incidents of this right, will be considered startling to both parties.

It would appear from the above that, even if the Government has the right, under old regulations, to make such laws, which is a doubtful point, it would be on no account equitable to do so under the existing circumstances. On the other hand, however, the condition of the agricultural population of Bengal should be improved. That a considerable portion of the ryots is deeply involved in debt and is not in a position to withstand the difficulties brought about by a season of scarcity, withal extraneous help, is a fact that cannot be denied, and everybody ought to be thankful to Government in its attempt to improve their condition, either by reducing the incidence of taxation on them, or by resorting to other means at its disposal. But this improvement of their condition should not be effected at the expense of the zemindars *alone*. I would, in pursuance of the suggestions already made on the subject, humbly suggest, that if all the interests in land above those of a right of occupancy are bought up at their market value by Government, and then a ryotwari settlement be made on conditions calculated to improve the status of the ryots, it would be desirable in every way and no one can reasonably object to the adoption of such a course; nor would such a plan, in my humble judgment, be attended with any great difficulty. On an average the capital which the Government will have to empty for this purpose would bring in a profit of about 5 to 5½ per cent. per annum, and if the credit of Government be taken as equivalent to 4 or even 4½ per cent., there would be left a reasonable margin to justify the adoption of this course. There is another point of view from which this question may be considered. It has been often asserted that the permanent settlement was a great mistake of the Government of 1793, and that, had it not been for this, the financial condition of the Indian empire at the present day would have been far different. If the permanent settlement has really produced any injurious effect on the financial condition of the empire, the adoption of the suggestion referred to above will prevent the recurrence of the evil in future. It is an undeniable fact that the value of, and profit from, land will increase in course of time, and it would then be optional with Government either to allow the ryot to reap the full benefit of this increase, or take a portion thereof to improve the finances of the country. If the former course be adopted, it will certainly have the effect of improving the condition of the agricultural population of Bengal to a great extent. Besides, there would be no difficulty or clashing of interests at all in enacting laws that are calculated to raise his status, and enable him to withstand the effects of bad seasons.

Although a ryotwari settlement is advocated above, this is not incompatible with the arrangement for making collections of rents through farmers. If Government feels any difficulty in organizing a machinery for making the collections, the present landed proprietors may be utilized in doing the same by a farming system.

I shall now proceed to make a few remarks with regard to some of the sections of the Bill.

In section 3, it is provided that a person who holds any land for even horticultural purposes is to be deemed to hold it as a ryot. This is an unnecessary innovation. Persons who engage themselves in horticultural pursuits are not generally of the class that is supposed to be in need of special protection at the hands of the Legislature. The incidents of

horticultural holding should not be the same as those of an agricultural one. Separate provisions should be made for the same in the Bill.

Section 5.—Khamar land is defined to be the private land of the proprietor. This definition is not explicit enough, and, if not altered, will give rise to a great deal of litigation. It ought to be expressly provided that khas possession should not be considered as essential in shewing that a land is khamar. In Lower Bengal generally, and in this district specially, all trace of the khamar lands of an estate is gone, and it would indeed be a matter of great difficulty to make out what lands are to be considered as such. In this section the word "proprietor" only is used. But as it is evident that the Legislature does not intend to deprive the putnidars and others of that class of their rights to these lands, the words "tenure-holders" should be added. It would also be better to provide expressly as to how the new-formed chur lands are to be classified.

The provision about making a survey of the khamar lands is well calculated to prevent a great deal of unnecessary ligitation.

In Section 15, as the words stand, they imply *any* twenty years before the institution of the suit. But a particular time should be fixed, immediately before which the ryot will have to shew that he held for 20 years continuously at a uniform rate of rent. There is one thing to be noticed in connection with this section. Auction-purchasers are placed at a very great disadvantage by the operation of this clause. They have not generally in their possession the collection papers of their property, by which they can shew either that the rent was different from what is stated by the ryot at some time prior to the institution of the suit, or that the tenure came into existence at a time subsequent to the permanent settlement. This difficulty was overlooked when Act X of 1859 was passed. But when the entire law is going to be remodelled, this opportunity should be availed of to remove the great hardship the auction-purchasers labour under.

Section 18 (b).—This clause restricts the right of the landlord to enhance the rent; only when the tenure-holder has obtained *reduction* of rent, and if the sections are allowed to stand as they are, it will be a matter of doubt whether the landlords will have a right to obtain enhanced rent in cases in which he once enhanced the rent of a tenure-holder. This clause apparently seems to be at variance with the provisions of Section 14. As I believe no alteration of the law on this subject is contemplated, it ought to be clearly provided that, when a tenure has been held from the time of the permanent settlement, any change of rent, either in the way of enhancement, or abatement thereof, would entitle the landlord to sue for enhancement.

Section 47.—It has been already remarked that this provision would appear startling both to the landlord and to the tenant. If a proprietor wants to keep a piece of ryoti land in his khas possession, it would preclude him from leasing it out to any resident ryot even when he may not require it. There are landlords, such as indigo planters and others, who keep a large portion of the ryoti lands of a village in what is called *nyabad*; but they lease them out at times to tenants for short periods when they do not require them. If this Bill be passed into law, they will be, as a rule, precluded from leasing them out to resident ryots, for fear least they may not get them back when required. The landlord in such cases, as also in every other case in which he may have a wish to occupy any land himself from time to time, will always be on the look-out for a farmer, or other person who will not acquire a right of occupancy by remaining in possession for a temporary period, and the resident ryot will, as a rule, be deprived of the advantage of cultivating such lands. Thus, besides being unjust to the zemindars, the law would prove detrimental to the interests of both parties. In my humble opinion, any such wholesale alteration in the law is not needed to raise the status of the agricultural population. It will create a very bad feeling between landlords and tenants, and in the struggle to prevent a right of occupancy from accruing on one side, and to acquire that right on the other, both parties will suffer. It is not so much the law that requires 12 years holding as necessary for the acquisition of a right of occupancy that has produced any evil effect, it is the uncertainty about the incidents of that right and of the law for enhancement of rents that has produced the evil consequences complained of. Had attempts been made at the time of the passing of Act X of 1859, as are being made now, to *define clearly* what the privileges of the occupancy tenants would be, and under what conditions and circumstances their rents could be enhanced, this question about the further extension of the right of occupancy would not have been considered so very important at present. I believe both parties were satisfied with the law on that subject, and as far as I am aware, of its operation as far as conferring a right to hold for ever at a fair rental has not been productive of any evil consequences. The ryots never wanted to have right of occupancy conferred on them in the manner provided in this section. Such an idea never had any place in their mind. I humbly beg to submit that instead of introducing such a fundamental change in the existing law, it would be better if the incidents of the rights of occupancy were clearly defined and the law made clear and definite on various other points.

Sections 52 to 55 are certainly calculated to counteract the evil effects which an unrestricted right of sale would have otherwise produced. But those landlords in whose estates

occupancy rights are not now transferable by custom will still have a right to complain that the ryots are allowed to sell their holdings and appropriate the proceeds of the sale to themselves; whereas under the existing law, if they did not require the holdings themselves, they had to relinquish them in their landlord's favour. To prevent all grounds of complaint it would be better if a record of the prevailing custom in connection with this matter in each local area were prepared by the revenue authorities, and full effect given to these sections as also to Section 50 (clause *f*) only in places where the right of transfer of the occupancy right is already recognized. In places where this custom does not prevail now, the same rights might be conferred on the condition that the landlord would be entitled to a certain percentage of the value of the holding whenever a transfer takes place, and this should be given him whether he wants to buy the holding himself or not.

Section 56.—When the landlord has paid a fair price for the holding he has bought, it would not be desirable to deprive him of the privileges which a third person would have enjoyed. He ought to be placed on the same footing with the other purchasers. If this sectioned be allowed to stand, it will indirectly nullify the operation of the preceding sections; for no landlord will give any price for a holding which he cannot, as a rule, keep in his *khas* possession, and which when leased out to a resident ryot, even for a short time, will go out of his lands for ever; nor would he be entitled to any higher rate of rent than what he could have claimed prior to his purchase. In many cases, the price that he would have to pay would be a total loss to him.

Section 59.—In my humble opinion it will be quite sufficient if the revenue officer's duty be confined simply to see that the ryot acts as a free agent, or that undue advantage is not taken of his position. If he is allowed to interfere further, it will injuriously affect the interests of both landlords and tenants. A ryot may be inclined to pay a slightly higher rate of rent to secure a particular piece of land, and the arrangement may be of great advantage to him, but if such a provision is made in the Rent Law, he might be deprived of this advantage.

The provisions regarding the preparation of a table of rates and so forth will prove highly beneficial to both parties, and will have the effect of preventing unnecessary and prolonged litigation between them.

I am very sorry that there is no time for me to make whatever remarks I had to make in some of the remaining sections of the Bill. This letter containing an expression of my opinion ought to have been sent long ago; but owing to circumstances over which I had no control, I could not send it earlier, and I hope you will be kind enough to excuse me for the delay.

No. 307.

Opinion of BABOO NUFFER CHUNDER PAL CHOWDHURY, *on the Bengal Tenancy Bill.*

I have been requested to give my opinion on the Bengal Tenancy Bill. The subject is so very wide, comprehensive, and affects so vast a class of our country, that, considering the responsibility which rests upon anybody, one would shrink to give any opinion within so short a time; but as there is no alternative, to lay down a few remarks which, though not a complete review of the Bill, will, I hope, render some important suggestions from the landlords' and tenants' point of view.

2. The present Bengal Tenancy Bill if enacted into law is of no benefit, but on the contrary a loss to the country. The landlords complained that the machinery of the Civil Courts was not sufficiently effective to enable them to realize their rents in time to pay the Government revenue, and that either the provisions of the Rent Law were too strict, or the construction which the courts have put upon them too narrow, to enable them to enhance the rent of their ryots as readily and as largely as the Legislature had intended. The complaints of the ryots were not so well defined. They appear to have been brought to the notice of the Government not by the ryots themselves, but for the most parts by executive officers whose duty it was to quell the disturbances which arose from time to time in the agricultural districts, and to enquire into the causes which led to them. The realization of abwabs and illegal cesses, illegal attempts to enhance rent, abuse of power, refusal to give proper receipts, are all that was brought to the notice of Government by these executive officers. This Bill, although introduced under the disguise of affording relief to both parties, virtually relieves none from the sufferings they are undergoing, and though it affords uncalled for privileges (the want of which ryots neither asked, felt nor dreamt of) to the ryots at the cost of the landlords, yet in important cases it gives no material help to any class when landholders are losing greater portion of their privileges and long-enjoyed just, and fair rights. Now to begin with the contents of the Bill. According to Section 5 khamar land means land situated elsewhere than in Behar which a proprietor has held whether under the name of khamar, nij-jote, sir, or otherwise, as his private land for 12 years before the commencement of this Act. All lands (accruing to Section 6) which is not khamar land of same estate shall be deemed to be ryoti land until the contrary is proved. It is not difficult to say from these definitions under what class the utbundi lands of the districts of Nuddea, Moorshedabad, Jessore, &c., should be included. It is evident that under Section 6 utbundi lands are ryoti lands. The landholders have all along enjoyed the privilege of possessing and holding utbundi lands as their own, improved these at their own cost, settled with the ryots to their mutual advantage, and profited largely, nay extensively, without injuring the ryots to the least. Now by a mere stroke of pen from the authority they are going to lose almost all the rights and privileges which they have enjoyed since time immemorial, and which enjoyment was loss to nobody, but a source of profit

to the landholders; nor can there be assigned any reason why the landlords will be deprived of their long enjoyed, just, and fair rights. I would therefore strongly protest against the enactment of these two sections, or even if these two sections are allowed to enact, a special clause should be inserted for the utbundi lands which is found nowhere else, but in Nuddea, and partly in Jessore and Moorshedabad.

3. Again, if we consider Sections 45 and 47 along with the above two sections, we find almost all the ryots will have a right of occupancy the moment they enter to cultivate the utbundi lands, for by Section 45 any person who for a period of 12 years, whether before or after the commencement of this Act, has continuously held as a ryot ryoti land situate in any village or estate, shall, notwithstanding any contract to the contray, and though the land so held by him at different times during that period may have been different, be deemed to have become, on the expiration of that period, a settled ryot of that village or estate, and by Section 47 every settled ryot of a village holding after the 2nd day of March 1883 as a ryot any ryoti land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force. But what advantage do the ryots derive from this? Is it the case that ryots do not get lands when they want to cultivate? Do the landholders reserve utbundi lands for their own private use, and refuse the ryots when they want? Then what is the use of depriving the landlords of their just rights and privileges, the deprival of which will make them loser to no small an extent. Furthermore, I should beg to state that not only the landholders will suffer if these sections are enacted into law, but the agricultural improvement of the country will to a great extent be restrained. It is the landholders and not the ryots who are to look after the agricultural improvements of the country. If landholders are not allowed the privilege of utilizing the utbundi lands, there will be no equal distribution of land among the ryots. Some of the ryots will hold to no useful purpose, while others will be deprived to the disadvantage of the country. The landlord is empowered to certain improvement, yet in the majority of cases he is quite dependent on the ryot; for instance, a piece of land which a settled ryot holds for a month or two for cultiviting rice is required by another for making it a homestead or orchard, then the value of the land will increase, and the country will derive a greater benefit in case the land is allowed to be improved as required.

4. Section 15 of the Bill is the Section 4 of Act X of 1859.—The presumption of 20 years' payment of rent before the institution of a suit for enhancing rent was then more important than it is now. During the last 20 or 25 years, ryots have understood their rights, and I think, if the force of this presumption is to continue at all, it should be 20 years before 1859 and down to the time of the institution of the suit. Section 23 limits the enhancement of rent; when the rent of a tenure-holder is liable to enhancement, the enhanced rent fixed under Section 21 shall not be more than double the rent previously payable. It is difficult to say how far this is fair and equitable. The Legislature, Section 21, (1) fully explains his views when he says :—"When the rent of a tenure holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity." Again in Section 21, (2) when no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the court thinks fair and equitable. By this what are we to understand? When the rent of a tenure enhanced according to the customary rate payable by persons holding similar tenures in the vicinity, or according to what is fair and equitable, or according to both, as the court thinks fit, exceeds double the rent previously payable, will the court decide according to the customary rate and what is fair and equitable: or will the court decide, according to Section 22, *i.e.*, not to exceed double the rent previously payable? Instances of these are not of rare occurrence; so it will not affect the landlord to a small extent. Is it right that the landlords will be deprived of what is fair and equitable? Is it the intention to be kind to the ryots at the cost of the landlords who should be deprived of what is just and right and equitable and fair? I need not go further to shew the unjustness of such an arbitrary rule. Section 22 of the Bill should, in my humble opinion, be struck out of the Bill.

5. About the transferability of occupancy rights, Section 50, clause (6), gives the right of transfer of occupancy right. There is not a rule more detrimental to the interests of both landlords and ryots than this one. On a cursory view it may appear that by empowering the ryots to transfer their occupancy right the Legislature puts some value on such holdings, but if we go deeper we find that such a power not only deprives the ryot of his means of subsistence, brings him and his whole family to ruin, but also places the landlord in a precarious position, often to run into disputes with a class whom he fears. As a general rule the ryots never wish to dispose of their holdings but to cultivate it and thereby maintain themselves and their families; they are never speculators, so nothing but extreme pressure and dire necessity will oblige them to part with their holdings; and is it at all likely that *bonâ fide* ryots—the poor cultivators of the soil—will be able to purchase these occupancy rights? The peasantry as a class, and specially of this district of Nuddea, are heavily involved in debt, and if this Bill is enacted into law, will the mahajans allow chances of this kind to slip through their fingers?

The consequence has been already pointed out by many of the officers who have been consulted upon the Bill, and I am sure if it passes into law, the mahajans and speculators of lands will soon be paying up all the occupancy rights, and what will then be the condition of the actual cultivators of the soil? They will be virtually robbed by the mahajans who have no position or character to lose, who have had little or no education, and who would buy up these rights for the very purpose of securing the last piece out of the cultivating classes. By

setting a value on their properties, will it not be ruining them? I think 75 per cent. of the cultivating class of this district are involved in debt. If opportunity be given to the mahajans and other creditors, will they not exert their most to realize their dues by buying up the holdings of their debtors which they consider and really is the best of all their movable and immovable properties? From my practical experience of 15 years I am in a position to say that the mahajans never look after the interest of the ryots; whatever good they seldom do to the ryots are always on account of their own interest, and if this right of transfer is allowed by law, then within a short time greater portion of the lands now occupied and enjoyed by the ryots will go into the hands of mahajans and other land-jobbers. So much for the ryots. About the landlords, they are going to lose the right of settling the utbundi lands according to their mutual advantage, which is always a source of increasing their income without putting their ryots to the least inconvenience. Secondly, they will have to deal with a class of people with whom they are not acquainted, with regard to whom they have not cherished a good feeling, as they have done with their ryots since the time when they first became landlords; and what more, both parties being on the same footing, and there existing no good feeling between them, as is generally the case, there will be no end of troubles. For these reasons I am of opinion that this section if passed into law will not only be cruelly unjust to the landlords, but will operate most injuriously on the very class which it is intended specially to benefit.

6. Section 59 (2) should be omitted or at least that part of it which deals arbitrarily. It is not easy to understand why the rent if enhanced more than 6 annas per rupee fairly and equitably and with the consent of the ryot will not be approved or registered by a revenue officer. What is just and fair should have effect, and nothing else.

7. Section 60 should also be omitted. It increases litigation. It is beyond the power of any reasonable man to understand why a suit for enhancement should be instituted, and both parties harassed and made to suffer when the ryot agrees of his own accord and at his own will to pay an enhanced rent of more than 6 annas per rupee which is a just and fair and equitable demand of his landlord.

Section 76 is also objectionable for the reasons stated in paragraph No. 7.

Section 93 (*b*) runs as follows:—"A further sum as compensation for disturbance, equal to ten times the yearly increase of rent demanded." The landlord institutes a suit of enhancement only when the ryot does not agree to pay his demand. The court in passing a decree consider the fairness of the claim of the landlord, and if satisfied with the evidence of the plaintiff issues order for ejectment. From this it is clear that the landlord's claim is right and just, and he is entitled to what he claims; on the other hand, the ryot wilfully neglects to appear in the court, or appearing before the court, unjustly and unfairly, and perhaps with some wicked intention, refuses to pay enhanced rent. Is this equity, that the landlord to get his just dues should pay ten times, or what he should have received as his own year by year from a time long anterior to what he claims? It can fairly be said that the disturbance is caused not by the landlord, but by the ryot; for who cannot claim his just dues? And such claimant can never be a disturber, but he who refuses to pay what is justly due to the claimant. So this penalty equitably cannot be imposed upon the landlord. If it is argued that the landlord is going to get possession of the holding for which he can easily pay ten times the yearly increase of the rent demanded, I must say it is a mistake: the landlord is seldom a gainer by getting khas possession of the holding; and if, for argument's sake, it is admitted that he may be a gainer, even then why the landlord will be made liable for ten times the yearly increase when he claims his just dues, and the ryot loses his holding through his own fault or wickedness. I think every reasonable and unbiassed person will object to the passing of this section into law.

8. *Section 140.*—There is one difficulty to be met with in this section. When a tenant forsakes his holding, and the landlord cannot enter into and settle the land for a year, how is the landlord to get rent for that year? It is true that the ryot will be liable for the rent, but it is not an easy thing to realize from him when he is not in his village or estate. I think not even 10 per cent. of such rent is ever realized: I would therefore propose that the section may be read as follows.

9. Any tenant of a holding which is not transferable, who leaves his holding uncultivated, *but does not leave his dwelling-house*, and the rent of the holding unpaid for a period of one year, shall, at the expiration of that period, be deemed to have surrendered the holding.

I am sorry that the time allowed enables me not to go minutely on the Bengal Tenancy Bill; however, I think, the important points have been touched, and I think an impartial reader will be astonished at the partiality of the Bill: it is all for the ryots and nothing for the zemindars; not even the slightest facility is given for the settlement and realization of rents, although this Bill originated, as noted above, at the request of the landlords. I think this Bill, if passed into law, will effect a redistribution of property on the communistic principle, for the ryots are to be raised to the status of co-partner, and the zemindars reduced to the position of only one-fifth shareholders in the estate, though their responsibilities as owner will remain the same. It is not for me to contend against the modern interpretation of the rules of the Permanent Settlement, but I think I have the privilege to say that for nearly a century successive governments and legislatures and courts of justice decided according to its dictionary meaning, and, depending upon their solemn assurance, almost all the zemindars of the present day invested their capital on land. Now, I would ask if it would not be extremely hard and unjust to the zemindars of the present day, who have laid out large sums of money in the purchase of landed property, which they have hitherto been led to believe their entire property, to be told that they are only one-fifth shareholders in the estate, and that too under certain

conditions and limitations. The zemindars of the present day (for the number of zemindars by purchase afterwards is not even one in 100) have actual *bonâ fide* and under an honest conviction, in which they have been confirmed by the highest authority, laid out their entire property in the purchase of soil, and now to deprive them by a single stroke of the pen without any compensation of rights which rightly they have been permitted to enjoy for ninety years or upwards—the longest period for the *accrual of a prescriptive* right being only 60 years—would, in my opinion, be little short of confiscation; and now I would further question, for whose benefit are the zemindars' interests being sacrificed? The actual cultivators of the soil hardly gain much under the present Bill, but it is the mahajans, the jotedars, the land jobbers, and the middle-class men who will be most benefited, or, in other words, a class of petty landowners is to be raised in the room of large zemindars. Is this a wise policy? I believe it has been practically proved, and an accepted doctrine, that the big landholders are the most lenient, and that it is the petty landowners who have the greatest temptation to press hard upon their tenancy, and besides the country is expected to derive greater benefit from big landholders than from petty landowners.

Under these circumstances I am strongly against the Bengal Tenancy Bill, and consider it to be my duty to protest earnestly against the encroachment of our just rights and interests, and to exert by all lawful means to avert the threatened blow.

Dated Sindooree, 9th May 1883.

From—W. Shireff, Esq.,

To—Baboo Rakhal Dass Mookerjee, Deputy Collector, Chooadangah.

I have the honour to acknowledge receipt of your communication No. 58 of the 18th April, asking me for the expression of my opinion on the proposed Bengal Tenancy Bill. I have gone over the proposed Bill as published in the *Calcutta Gazette* of the 7th March last, and looking at it from the landlord's point of view, I don't approve of it at all. The one great grievance that the landlords had to complain of was the difficulty of getting in their rents speedily through the courts, but I do not see that the new Bill gives any facilities in that way. It takes away to a very great extent the rights of the landlords as hitherto possessed by them, and leaves them mere rent collectors for the Government, with all the responsibility of having to pay up the Government rents on the appointed "Lot" day, as formerly.

It seems to me be a most complicated Act, and that there will be considerable difficulty in working it. I believe it will lead to an immense amount of fresh litigation, and though it seeks to benefit the ryots at the expense of the landlords, yet the real people who will benefit by it will be the mooktears and pleaders about the Moonsiff's courts; while the ryots will impoverish themselves by litigation, and a bad feeling will be established between them and their landlords, which will go far to undo any good they might have got by this new measure.

I have to apologize for not having replied to your communication sooner, but I have been so busy attending to our indigo-sowing, at this season that I have not had time to do so earlier.

No. 328G, dated Berhampore, 18th May 1883.

From—Herbert Mosley, Esq., Collector of Moorshedabad,

To—The Commissioner of the Presidency Division.

With reference to your circular No. 9R.-L., dated the 24th ultimo, I have the honour to inform you that in my opinion the new Rent Bill goes much too far, and will result in difficulties to zemindars which may have a prejudicial effect on the Government revenue.

2. Generally the effect left on my mind after reading the Bill is that it has been drawn up for the purpose of supporting an ignorant and easily deluded peasantry against zemindars who are always trying to get the better of them. In some parts of the country it may be that the ryot is generally unable to look after himself, but this is certainly not the case everywhere. In this district, as in many others, the zemindars generally have by no means the best of it, and little more is wanted than a much cheaper and very much more expeditious mode of deciding suits than exists at present.

3. I proceed to notice the different chapters of the Bill.

CHAPTER I.

4. *Section 3* (5).—I would strike out the latter part of this clause. I do not see why in a law for the protection of the cultivator, the same protection should be extended to him after he ceases to be one, though he may have come into possession (either by himself or through his ancestors) of land for cultivation, and is therefore a ryot; he should, I think, cease to be a ryot when he ceases to cultivate, using the land for other purposes.

5. In the same section I would strike out everything relating to sub-letting, for reasons given further on. (Under-ryot would thus go.)

CHAPTER II.

6. I would strike out the words "before the commencement of this Act" wherever it occurs in section 5. I do not think the chapter is a good one at all, but if it be thought necessary to have it, I do not see why the zemindar should not be in as good a position as the ryot as regards right of occupancy. And while this chapter absolutely prevents land becoming

khamar in future, section 49 provides for present khamar land ceasing to be such, which seems decidedly unfair to the zemindar.

CHAPTER III.

7. *Sections 22—24* might, I think, be dispensed with; they make arbitrary fixtures which might better be left to the courts: no court, for instance, would entertain prayers for re-enhancement soon after enhancement unless for very strong reasons, and I really cannot see why they should be unable to entertain the prayers even immediately if those strong reasons exist. And suppose a ryot holding poor sandy lands in a hollow, for some reason has his rent raised from 4 to 5 annas a bigah in 1883 and in 1884, a flood comes which fills up this hollow with rich alluvial soil, making the land worth Rs. 2 a bigah; why should that ryot reap all the benefit for nine years and the greater part for next ten, &c.?

8. These may be extreme cases, but why should law prevent justice even in extreme cases?

9. And while these restrictions are put on enhancement, the ryot is perfectly unrestricted as regards reductions.

10. In *sections 32 (3) and 33 (3)* the word "sufficient" should be inserted before "cause."

11. In *section 35 (2)* it might be well to insert what authority is to inflict the fine, and how it is to be realized.

CHAPTER IV.

12. It would be well if in this chapter something were inserted to remedy a most inconvenient state of things that exists as regards registration. Some penalty is required, or some other remedy in the case of non-registration. Section 39 enables the zemindar to refuse registration in default of security; but what is the consequence of the refusal? And how will refusal force the new patnidar to give security? And what is the consequence of a private transferee never asking for registration. The only consequences apparent are that the zemindar loses fees which he is entitled to, and is sometimes utterly ignorant of who is his real tenant. Of this I have practical experience; in the case of some patni estates in a neighbouring district rents have been paid into the treasury on account of one of my wards' estates in the name of the old patnidar, though private transfers had occurred, and this is only found out when on a default our sole remedy is objected to, because the notices have not been served on the real (new and unknown) patnidars.

13. The law should, I think, insist on every new holder registering and giving in a new kabulyut under disability penalties. The disabilities should be twofold, that is, an unregistered holder should be unable to recover rents, and he should by law be expressly deprived of right to object in any court to any steps taken by his landlord to recover rent. I still also adhere to my formerly expressed opinion that after a certain time non-registration should entail forfeiture of all rights to the zemindar (and I would extend this to all tenures and holdings of any description whatever).

14. And when zemindars are forced to coercion to get in their rents, the extra costs ought to be granted to them by law.

15. The next chapter (V) treats of occupancy ryots, and I think that the further concessions made to the ryots are most unnecessary. This creation of the law was bad enough in the eyes of zemindars already, though I believe as a general rule the objection was a theoretical more than a practical one. As a matter of fact (excepting perhaps a few districts) a long standing tenant was seldom interfered with so long as he paid his rent.

16. Now, however, there is a further drawback. The new "settled ryot" taints every particle of land he touches, and there is no washing out that taint, for if a landlord buys the occupancy right, he cannot extinguish it; it passes with the land to any one who takes it. The "settled ryot" will become a marked man, never to have land given to him, &c.

17. There is in sections 45, 47, 50, the same disabling of a certain class to make contracts, which I think so objectionable throughout the Bill; this is, I think, likely often to inflict hardship. For instance, it is often highly advantageous to the ryot to hold certain lands for a year or two, and this may suit the zemindar too, except for this new law which would void any contract to give it back after the term, and so the ryot will not get it.

18. Section 47 will cause injustice by handing over as occupancy land which has been expressly let for a term only.

19. In Section 50 I would alter clause *a* to one expressing that he may only use the land for cultivation, and clause *e* I would eliminate. If, as I think is the case this Bill is intended to protect ryots, I fail to see why it should allow subletting. A ryot ceases to be a ryot when he ceases to cultivate; when he sub-lets, he becomes that most oppressive of all landlords, a petty middleman. To protect the actual cultivator of the soil is well; to put a man between him and the zemindar can only injure one or the other. If the sub-tenant only pays a fair and equitable rent to the middleman, it is very evident that the latter pays a less than fair and equitable rent to the zemindar, which would be contrary to clause *c*, and if the ryot turned middleman *does* pay a fair and equitable rent to the zemindar, then it is evident that the sub-tenant, the actual cultivator, pays an unfair and inequitable rent, and how does this improve the condition of the cultivating class.

20. Section 56 destroys all advantage a zemindar might gain by buying an occupancy right, which would be held under clause *c* at fair and equitable rates, for immediately he lets

another ryot on, he loses what he bought. He cannot re-let at a higher rate, for the new tenant jumps into the right of occupancy, and would say, "the rents before were fair and equitable, and you cannot make me pay more notwithstanding any contract I made."

21. Sections 59 (2), 61 (2), and 64 proviso, limit rent to one-fifth of estimated average value of crops, while section 81 makes it one-half. I confess that I am unable to see how this is equitable. One-fifth of the produce of an exceedingly good year may be equal to half that of a bad year, but if an average is to be taken, I should say that one-half of the average produce would be about the equivalent of one-half of the produce year by year, taking a number of years, and section 82, allowing a commutation of rent in kind on an average of five years, making a reasonable deduction as in clause 3, that is to say, the money rent may by this be nearly one-half of the average value of the produce, while the above sections make the maximum one-fifth.

22. As regards the sections providing for tables of rates, I can only say that I do not believe such tables could possibly be prepared accurately. My experience in settlements shews that no two villages are alike, or can fairly have one table of rates assigned to it, and the special officer who was sent up here to enquire about this matter told me that his enquiries led to exactly the same result.

23. I also doubt very much whether such a list as that contemplated in section 83 can ever possibly be prepared with any accuracy, and without accuracy the provision would be very mischievous. I do not see how the Collector can ensure getting truthful returns.

24. Turning now to ordinary ryots, I see by section 90 a zemindar cannot let land for a term at all, and section 95 will effectually stop a zemindar from spending money over improvements wherever rents have been enhanced a short time previous.

25. And letting for a short term at a nominal rent to improve the land will be put a stop to, for the ryot, when he is called on for an enhanced rate, will refuse, and then by section 93 the landlord *may* have to pay compensation for improvements, and *must* have to pay compensation for disturbance, though all this was allowed for in the shape of nominal rent. If it be said that this instance does not apply as 91, and the following sections do not apply to holdings fixed for a term by agreement, then I fail to see how the zemindar can get back his land at all, for section 90 bars all contracts to give up land.

26. Section 101 will throw on zemindars a burden so heavy that I doubt whether it will be carried out. For a large estate full of small ryots the work would be enormous; the registration or something like it, though more simple, should be kept, but to furnish each ryot with a copy would entail enormous labour and great extra expense, which if the receipts are properly given seem hardly necessary.

27. To section 119 (as to others fixing proportions of estimated value of gross produce in staple crops as the limit of rent) I rather object, but it is difficult to say anything positively till it is known what crops are to be considered staple. But the creeper producing the pân leaf would not be a staple crop, I suppose, in which case a most profitable crop might be grown, and the zemindar gain next to nothing, for where the pân plan grows, rice or corn would produce next to nothing.

28. I should think it would be well to have some mode of deciding the question which might arise as to whether certain works are improvements [Chapter X (A)], and whether the zemindar or ryot wishes to do the work, the other side should by an express section have the power of putting him to the proof as to whether the work is an improvement or not. Otherwise there is a possibility of land being permanently injured to the loss of one side or other.

29. I have little more to remark on, except that I think section 171 should itself specifically declare how the cost of cutting, &c., (clause 2), is to be met, and that, as I remarked at the commencement of this letter, I should prefer to see a simpler and quicker procedure for suits. And I cannot but again say that I am afraid the Bill if passed will result in ruin to many zemindars, and I may add that the agitation among the ryots that, you may remember, occurred to the south of this district some time ago when a Bill was being prepared shadows forth pretty distinctly what may be expected if this Bill passes.

30. I have received only one reply to the call I sent out for opinions on the Bill, and enclose a copy of it. If more come in, they will be sent as they arrive.

Dated Berhampore, the 5th May 1883.

From—Baboo Gopal Chunder Mookerjee, Vakeel,

To—H. Mosley, Esq., C.S., Collector of Moorshedabad.

In obedience to your requisition, I have the honour to submit the following opinion on the Bengal Tenancy Bill now before the Supreme Legislative Council.

The necessity for legislation, at least on some portions of the law of landlord and tenant, has been too generally admitted to remain any longer an open question. The want was, however, felt from the landlord's, rather than the ryot's point of view. A simpler procedure for the realization of rent, and a speedier way of enhancing rent, and with greater success, were felt among the wants for the interests of the landlords. The Bengal Legislature was at first moved to remove this want, but the matter has now assumed a different aspect. A considerable portion of the law on the subject has been recast, and the relative rights and positions of the landlords and their tenants have been redistributed; the general scope of the proposed bill is to take away from the landlords some portions of what they consider as their vested rights, and

improve the position of ryots at their expense. Nor is the Bill calculated to promote harmony and peace between landlords and ryots; occasions for law suits and official interferences have been increased, so as to excite bad feelings between the parties. We think, so far as the landlord is concerned, he would rather like to be subjected to the inconveniences of the present state of the law on the question of realization and enhancement of rent than accept the provisions of the present Bill.

The position of the ryots has undoubtedly been improved by the Bill. How far this has been consistent with the pledges given to the zemindars at the times of the permanent settlement is a debatable point. If the Bill succeeds in raising the *status* of a very large portion of the community, and protecting the helpless, that is a point greatly in its favour. Some of the important provisions of the Bill, however, are open to just criticism.

In Chapter II provisions have been made for measurement and registration of khamar lands, with an object of preventing the zemindars from increasing such lands at the expense of ryoty lands, in which important rights are to accrue in favour of ryots. With regard to Lower Bengal at any rate, it may be said that there has not been on the part of the zemindars any degree of anxiety to extend their khamar lands. If their ryots abandon lands, then only some lands are cultivated *khas*, not so much to prevent the accrual of the right of occupancy, but as a speculative measure to keep up the rent-roll of the mehal. The provisions of this chapter are unnecessary, inquisitorial. They will lead to discontent, and wake up the zemindars to separate as khamar a larger area from ryoty lands, apprehending loss from a different line of conduct.

In Chapter V important changes have been introduced as to the growth of occupancy rights and certain incidents attached thereto. A settled ryot holding lands in a village continuously for 12 years is to acquire a right of occupancy over other ryoty lands, however, short may be the period of his occupation of these latter. Such rights again have been rendered transferable against the consent of the zemindar, giving him a right of pre-emption. Such changes are serious encroachments upon the rights of the proprietors of the soil, and not justified by circumstances of the cases. If the occupancy right is considered important enough to be made transferable, it ought to have all the incidents of a transferable interest. The zemindar's right of pre-emption renders it a half measure neither satisfactory to the landlord nor to the tenant. It will, moreover, increase litigation, and introduce want of harmony between the landlord and his tenant.

The question of enhancement has been dealt with in Chapter VI. We cannot say that this matter has been put on a srtisfactory basis. There are no uniform pergunnah or customary rates prevalent over a large area. The circumstances of lands and nature of their holdings vary to a considerable extent, and so also the rates. Preparations of tables will be very difficult and expensive, if not impracticable, to be accurate; they should require a degree of investigation not shorter or simpler than what would be requisite to decide enhancement suits for the area under investigation. The process is, moreover, to be repeated in a Civil Court when a particular holding comes under assessment. Distinctions and differences will be pleaded to take it out of a given rate in the table, and the Court must decide if it wants to do justice therein, by a fresh investigation and enquiry which will by no means be shortened or facilitated by the table of rates prepared. The case will remain where it was, with or without the table.

We are of opinion, therefore, that a speedier and more successful remedy for re-adjustment of rent has not been secured for the zemindar by the proposed Bill.

A contract between a landlord and his ryot, to be binding and effective, needs the approval of revenue officers (section 59). Certain statutory rights conferred upon "ordinary ryots" cannot be modified or superseded by any agreement between the parties (section 90).

These are unnecessary interferences with the freedom of action. The existing laws respect such contracts. This change is against the policy of a civilized Government which has abolished the usury law, and respected individual liberty of action in every other transaction.

A summary procedure has been demanded on behalf of the landlords to realize their rents. The delay and costs incident to a rent suit, like all other suits tried now by the ordinary procedure, have been considered a grievance. Where the zemindar's claim is not disputed, the ordinary procedure does not delay the passing of a decree, and a more summary procedure cannot shorten the time. If the claim be contested, a summary procedure cannot do justice between the parties. Objections made must be fairly decided, and experience tells us that rent claims are contested by ryots when there is a pre-existing want of harmony between the parties, and want of fair play is apprehended. We fully approve of the principle of the Bill regarding this matter. Expenses are incurred by adjournments and heavy process fees. The former may be avoided by a better arrangement in the judicial service; the latter, if an evil, by an amendment of the Court-fees Act. If the justice of the case needs an adjournment, that must be granted rather than justice should suffer.

But we fear the broad principles of the Bill have been determined upon. I have some observations to make upon some of the sections:

CHAPTER I.

1. *Section 3, clause* (5).—The word person has not been defined in the Act. A question often arises whether an indigo concern or a firm like Messrs. Watson & Co., not registered, nor having a corporate existence, can be called a ryot, and entitled to the right of occupancy

with reference to lands held or cultivated by them for indigo. The High Court of Calcutta has denied them such rights—*vide* I. L. R., 4, column 957; 25, S. W. R. 117.

The Legislature ought to define their true position.

CHAPTER II.

2. A section ought to be added to this chapter analogous to section 89, Bengal Land Registration Act (VII of 1876 B.C.), providing that registry under this chapter of khamar lands must not affect the rights of third parties, or their remedies by suits in Civil Court.

CHAPTER III.

3. *Sections 11 and 15.*—In some parts of Bengal, quantity of land held varies from year to year, but the ryot is assessed at the same *rate*. Benefits of these sections are intended to be given to such ryots (*vide* section 17). After the words "at a rent" insert "or a rate of rent" in the third line of section 14 and section 15, and amplify section 17 to cover such a case still more clearly.

4. *Section 25.*—Add "sub-let" after "bequeathed." "Transfer" as defined in section 3, column (16), does not include sub-letting. And this right is vested in tenure-holders subject to other provisions in respect of sales for arrears of rent of the superior tenures, &c.

5. *Section 32* (1) —After "any Civil Court having jurisdiction" insert "to entertain a suit to recover possession of the subject-matter of such transfer or succession," and strike out down to "situate." The section, as it stands, does not provide for the class of courts to which such an application is to be made in so far as the pecuniary jurisdiction is concerned.

CHAPTER IV.

6. *Section 41* (1).—Civil Court in this section is probably limited to the court of the District Judges, as by the present patni law (Regulation VIII of 1819) jurisdiction ought to be extended to any Court having jurisdiction in a suit to recover possession thereof. This will afford greater facilities to the parties, and Civil Courts in general ought to possess greater confidence now.—(2) Strike out this: the right of appeal would be a sufficient check against arbitrary orders.

CHAPTER V.

7. *Section 46.*—The period of one year is too short to justify the inference of abandonment. This ought to be extended at least to three years. Thus "ceasing to hold" should also be without paying any rent. Hence put "three" for "one," and add "without paying any rent" after "with others."

8. *Section 47.*—Proviso, for "owner" substitute "proprietor." As defined in the Act, owner is very vague; an occupant ryot may be the *owner* of his own land.

CHAPTER VI.

9. *Section 59.*—The limit of one-fifth of the estimated average annual value of the gross produce in this and other sections of this chapter is too low; it ought to be one-fourth.

CHAPTER VII.

10. *Section 85* (2).—A sub-section should be added to this section providing for abandonment. If a ryot owning any *basto* land leaves the village without any intention of returning, and does not pay rent, the landlord may take him to have abandoned his holding, and should be entitled to settle with another ryot.

CHAPTER VIII.

11. *Section 93* (*b*).—The compensation on this head is too high, nor is this founded upon any legitimate claim that the ryot can put forward. This clause ought to be left out.

12. *Sections 90 and 95.*—Ordinary ryots should occupy lands, and leave them off according to the contract between the parties. The two sections ought to be amended accordingly.

CHAPTER IX.

13. *Section 104* (1).—The right to deposit is often a nice question, and must be left to be determined by a Civil Court if occasion arises. This section unnecessarily gives the officer to whom a deposit is made a right to see whether the ryot is entitled to make the deposit. His functions ought to be limited to receive deposits if accompanied by a declaration of the ryot containing the ground upon which he can deposit under section 103.

14. *Section 125* (2).—If the tenure is sold subject to the charge, the rent ought to be realized from the tenure in the hands of the purchaser.

If sale-proceeds fall short of the rent due, is the tenure sold to be held liable for the balance? The section ought to be amplified to provide for all cases if rent be considered a first charge.

Dated Saidabad, the 8th June 1883.

From—Baboo Baikunt Nath Sen,

To—Herbert Mosley, Esq., c.s., Collector of Moorshedabad.

I have the honour to send herewith my notes on the Bengal Tenancy Bill. I hope to be excused for the delay that has been made in forwarding the same to you.

No. 485G, dated Berhampore, the 11th June 1883.

Memo. by—The Collector of Moorshedabad.

Copy forwarded to the Commissioner of the Presidency Division in continuation of this office No. 328G of the 18th ultimo.

Notes on the Bengal Tenancy Bill.

CHAPTER I.

Section 3, clause 5.—In the definition of ryot it ought to be clear whether firms and companies have been meant to be included or excluded.

CHAPTER II.

Section 5.—Uncultivated or unculturable waste lands, and not in the actual occupation of any ryot, ought, in my opinion, to be treated as "khamar land."

CHAPTER III.

Sections 14 and 15.—Difficulties would arise and litigation would be the result if the holdings contemplated in these two sections be treated as tenures. In furnishing receipts and statements of accounts to tenants much difficulty would be felt.

CHAPTER IV.

Patni tenures.—Express provision ought to be made for protection of patni by any person interested, besides holders, by payment of arrears.

CHAPTER V.

Section 45.—Provides that occupation even of different lands at different times, notwithstanding contract to the contrary, creates a right of occupancy. This is a great encroachment on zemindar's rights, and implies a denial of liberty of action. Contracts under the Contract Act can only be avoided on certain grounds, which do not include the present case, when a zemindar merely secures a clause or condition to his benefit in a perfectly legal way under the existing law. Violation of the laws of personal rights and status would be the direct result if such a measure be adopted, and consequently the principle involved would be a dangerous one.

Again if a ryot with his eyes open enters into a contract, why should he be permitted to repudiate it? Or why should the Legislature shew any anxiety for the protection of the interests of the ryot on the ground that "such is the power of the zemindar, &c., &c., &c., defeat and failure," *vide* paragraph 33, Statement of Objects and Reasons.

If the ryot be induced by any misrepresentation or concealment of fact, the contract itself would be bad in law, but if the contract be otherwise good and valid, legislative interference declaring the same to be null and void is quite unjustifiable. Good policy must be based on equitable principles, and equity is equality; therefore, the interests of both ought to be taken into consideration.

Apart from this consideration of legal rights and privileges, a more comprehensive view ought to be taken as to the consequences which would ultimately result. Ryots know they have to depend much upon the zemindars, who again, generally speaking, at least in Bengal, look after the welfare of the tenants on a consideration of their dependent state. The feeling that is likely to be engendered amongst tenants and zemindars in ignoring contracts, deliberately entered into is almost sure to be of an unhappy nature, and would, I apprehend, lead to results disastrous to the ryots.

The means and powers contemplated in the Government letter No. 6 of the 21st March 1882 in the hands of the zemindars, if they do really exist, would in all probability be so made use of that the ryots would be compelled to give up their lands, and thus the measures proposed to be adopted by the Legislature for the improvement of the condition of the ryots would be entirely frustrated.

If the occupation of different lands give a right of occupancy, ryots would neglect the improvement of the soil, and so the agricultural interest and advancement of the country would be affected. If the ryots know, as they do know now, that continuous occupation for a certain period of the same land would give them a right of occupancy, they would, having no choice or option, adhere to the land, and try to improve its fertility, and thus make it profitable; very different would be the case when they would have the option of cultivating different lands with no fear of losing their right of occupancy.

Sections 50—55.—The transferability and heritability of occupancy right have properly been recognized with certain qualifications and conditions.

Section 56.—The provision in this section seems objectionable. This is to guard against the possibility of a landlord buying up on a great scale the occupancy rights existing on his estate or tenure with a view to locating ordinary ryots on the land. The question is, is such a measure proper and necessary? If a zemindar or a tenure-holder purchases an occupancy right, he ought to get the fullest benefit and advantage of his purchase; he has to pay the money equivalent for the right, and there being no reservation in favour of the ryot, the propriety of putting a legal restriction seems to me questionable. Then, again, where is the necessity for the precautionary measure? What if the zemindar or tenure-holder buys up all occupancy

rights in his estate or tenure? So long as he himself cultivates the lands by his servants or hired labourers, it is admitted there is nothing to fear; but where is the harm if he brings in new tenants, and locates ordinary ryots. The rights of these ordinary ryots would in the course of time ripen into occupancy rights, and whatever extra profits or advantages the zemindar or tenure-holder might derive before the development of the right of occupancy may fairly be looked upon as a return for the money he had to pay for reclaiming, as it were, the lands from the hands of any ryot having an occupancy right.

CHAPTER VI.

Section 59 (1).—An agreement by the ryot submitting to an enhancement of rent ought to be considered as valid and good; the approval of the same by a Government officer specially appointed ought to be dispensed with. Legislative interference with the freedom of action of parties is only justifiable under certain circumstances which make an agreement void, and for which sufficient provision has been made in the Contract Act (IX, 1871). Any agreement not otherwise bad ought to be considered as good and valid. In the uncertain state of things which must necessarily follow if agreements be declared valid contingent on the approval of a Government officer, I apprehend not only the zemindar and tenure-holder would be put to inconvenience and loss, but the ryot, also, would have to suffer a good deal. If there is misrepresentation or coercion antecedent to the agreement, the contract would be void by the operation of law It ought to be conceded that ryots in Bengal are now quite able to protect their interests, and that when they enter into contracts with their eyes open, any attempt at further protection under the guardianship, as it were, of a Government officer would lead to results which are sure to prove prejudicial to the interests of the cultivating class as well. (2)—In cases of enhancement, one-fifth of the estimated average annual value o the gross produce of the land in staple crops has evidently been treated as fair and equitable rent. This seems to be objectionable; more than a fifth share has all along been recognized as the rent due to the zemindar or tenure-holder.

In the latter part of sub-section (2), sections 59 and 61, "that it is fair and equitable and" ought to be left out. The validity of the contract ought to be made dependent on free agency only.

CHAPTER VII.

Section 62.—A table of rates and produce, if correctly and carefully prepared, might be of very great use in settling questions regarding enhancement of rent; but it is necessary that special care should be taken for the preparation of the table. The revenue officers to be employed ought not to be below the rank of a Deputy Collector, section 74. With regard to tracts for which a table of rates and produce is not in force, the grounds for enhancement of rent seem to be fair and reasonable.

Provision ought to be made in this chapter for the enhancement of rent on the ground of occupation of land in excess of that for which rent is paid.

The limit of one-fifth of the estimated average annual value of the gross produce of the land in staple crops, calculated at the price at which the ryots sell at harvest time, seems to be too low; it ought to be raised to one-fourth, if not one-third. Bhagjotedars in Bengal generally pay half the produce, and sometimes more.

Section 83.—As a great deal will depend upon the price list to be annually prepared, opportunity ought to be given to the public for proper representations to the Collector to enable him to prepare the list correctly.

CHAPTER VIII.

Ordinary ryots having no right of occupancy ought to be left to themselves for securing their interests by agreements with their landlords. Though the desirability of interfering as little as possible between tenants of this class and their landlords is admitted, yet I venture to think that the provisions of the Bill in this chapter take away the undoubted right of the landholders to deal with such tenants. This chapter should, in my opinion, be left out altogether.

CHAPTER IX.

Section 90.—Land might not be added to a holding by alluvion or otherwise, yet on measurement it may be found that a ryot is in possession of lands in excess of the quantity of land for which he actually pays rent. This may be owing to gradual encroachment on waste lands or owing to mistake in the first measurement. The case of encroachment might come under the purview of section 96, but the other case, I think, does not. Some provision for payment for such excess lands ought to be made. This provision may be incorporated in this section or might be made a ground for enhancement of rent.

Section 98.—The limitation of instalments by which rent is to be paid in to not more than four, I venture to think, will tell very hardly on some tenure-holders, who by agreement have bound themselves to pay by monthly instalments. The provision therefore ought to be made prospectively, to affect future settlements or engagements. The existing contracts or customs regarding instalments ought not, in my opinion, to be interfered with.

Section 101.—The preparation and supply of the statement will entail some expenses on the part of the zemindar or tenure-holder. It is proper, I think, to make the ryot pay a small fee sufficient to cover the expenses before getting the statement.

Section 103.—Clause (*a*), sub-section 1, is not very definite; it is elastic enough to include any case in which a ryot might choose to deposit. Something definite ought to be laid down.

The application ought to be verified.

A provision ought to be made for rent being paid by money and in kind; in some parts of Bengal both money and part of the produce of the land are paid as rent.

CHAPTER X.

If transferability of right of occupancy be recognized, complications are not likely to arise in cases of improvements by occupancy tenants.

Improvements by ordinary ryots should be made at their risk; such ryots must take care to protect their own interests by proper agreements.

Section 133.—Cases of utbundi tenures should be excepted; in the cases of these tenures annual survey would be necessary.

CHAPTERS XI AND XII.

In my opinion, those two chapters contain sufficient and adequate provisions for meeting special cases.

CHAPTER XIII.

The provision regarding the distraint of the produce of land in the occupation of ryots for the realization of rent do not appear to me to be productive of any good.

Sub-section (2), section 167, makes every application for distraint liable to the court-fee which would be payable in a suit for arrears of rent, and this application may be refused at the discretion of the officer entitled to receive the same. Under such circumstances the application is not likely to be made often, if at all.

Then again section 186 makes it a penal offence on the part of the person owning or claiming any land for whose benefit or on whose behalf the offence mentioned in section 185 is committed, if having reason to believe that the offence was likely to be committed, he has not used all lawful means in his power to prevent its commission. Any abuse of power regarding restraints on the part of a gomastha might, under the provisions of the said sections, put the person entitled to the rent to great troubles and difficulties; I think, therefore, no zemindar or tenure-holder entitled to receive rent from a ryot would venture to distrain the produce of the land when he has such risk to run.

The chapter should, in my humble opinion, be either left out altogether or be recast.

CHAPTER XIV.

Section 192.—A statement of boundaries or a sufficient description for identification in the plaint for suits for rent should, in my opinion, be dispensed with; otherwise, I apprehend many complications and difficulties which ought to be avoided as far as possible in rent suits.

CHAPTER XV.

The provisions for the protection of certain encumbrances seem to me to be unnecessary. If the highest amount bid for defaulting tenures and under-tenures be insufficient to liquidate the decree, the said tenures and under-tenures would be sold free of encumbrances after the observance of certain forms. Such being the case, it is complicating matters by declaring such tenures and under-tenures as liable to be sold subject to the encumbrances in the first instance.

BOIKUNT NATH SEN.

The 8th June 1883.

No. 246 ^{A}, dated Dacca, the $\frac{29rd}{30th}$ June 1883.

From—N. S ALEXANDER, ESQ., Officiating Commissioner of the Dacca Division,

To—The Secretary to the Board of Revenue, L. P.

With reference to your letter No. 351A, dated 29th March last, I have the honour to submit the following report on the Bengal Tenancy Bill now under the consideration of the Legislative Council of the Governor-General, and to say that, though the Collectors of this division were requested to send in their reports before the 1st instant, the Collector of Furreedpore has not yet sent in his report up to date.

CHAPTER I.

2. *Section 1* (*3*).—The Collector of Dacca, Mr. A.W. Paul, writes:—"Many provisions of the Bill are most essential for Behar and are not needed, and would even create confusion in Eastern Bengal; yet, the Bill is to be general throughout the province (with small excep-

tions). I would therefore suggest that a general clause, somewhat similar in operation to section 187, be introduced instead of section 1 (3), somewhat to this effect: the whole or any portions of this Act shall extend to such local areas as the local Government may, by an order published in the official gazette, determine. I would point out that originally it was intended to have two parts in the Act, one for Behar and one for Bengal."

I quite agree with Mr. Paul. Eastern Bengal differs *toto cœlo* from Behar, and both from Orissa: no general rent law is applicable.

8. *Section 9.*—The work of registering khamar lands will be very heavy, and will require the entertainment of special establishment in most districts at a large cost: it is doubtful whether the work when done will be worth the trouble and expenditure. The Collector of Dacca states.—"I presume a separate revenue staff is contemplated for the purpose of carrying out this Bill, as in many districts, such as Dacca, it would be impossible for the Collector to supervise operations."

CHAPTER III.

4. *Sections 22 and 24.*—"The Burisaul zemindars," Mr. Dutt writes, "object to sections 22 and 24 of the Bill, and argue that no limit, either of amount or of time, should be set in the matter of enhancement of rents payable by tenure-holders. The provisions of those sections, however, seem to me to be equitable: to enhance rent over a hundred per cent would be exceedingly unfair under any circumstances, and frequent enhancements, or even suits for enhancement, should certainly be stopped."

I agree with Mr Dutt in thinking that there is no great hardship to the landlords in the enactment of these sections.

5. *Section 28.*—The Honorary Secretary to the Eastern Bengal Landholders' Association, at Dacca, writes:—"The relief contemplated by this section might easily be obtained by application to the zemindar: why then should the ryot have power to apply direct to a revenue officer? If the landholder refuses to register such transfer, then the tenant may apply to a civil court, as provided for in section 32." I agree in these remarks.

6. *Section 32 (d) &c.*—I do not see the necessity for this reference to the civil court. The offence of neglect to register should be made punishable by fine to be levied by the Collector; the procedure in these sections seems an unnecessary cumbrous one.

CHAPTER V.

7. *Sections 14-17.*—These sections will not make any very radical change in Eastern Bengal.

8. *Section 50.*—Mr. Waller, Officiating Collector of Mymensing, reports:—"The right of transfer of occupancy tenures has not been hitherto, I believe, admitted in this district. I think the landlord's right of pre-emption at sales in execution will not be much protection to him unless some limit be laid down as the maximum to which the holding may bid up; and, I think, the landlord ought not to be bound to register any one as his ryot who is not a *bonâ fide* cultivator. The right of occupancy is for the protection of the cultivator, and the land was originally let to the cultivator for cultivation, it seems to be inequitable, therefore, to allow a non-cultivator to be thrust upon the zemindar as an occupancy ryot."

9. I quite concur with Mr. Waller in his views on this point.

10. *Section 50 (f).*—The chief objection to the transferability of the occupancy tenure is, I think, the likelihood that the land will, in the course of years, become split up into an infinity of very small holdings; the people of this country cling so much as it is to their native villages, that, with the barest subsistence given them, they will not migrate, it will more than ever tend to produce a home-sticking poverty-stricken peasantry depending on agriculture for a livelihood. Of late years many artizans, such as weavers, smiths, &c., have abandoned their hereditary trades and gone in for agriculture, and this provision of the law will, I think, draw more away from trade and other pursuits and turn them into agriculturists.

11. *Section 51.*—Mr Dutt says:—"For many reasons, I object to section 51. In the first place, the provisions are too elaborate to be properly workable, and will never be complied with. A ryot who wishes to sell a bit of land on an urgent emergency (*e. g.*, to celebrate a marriage) will not go to the Collector, nor wait for the time prescribed: ryots generally do not sell their jotes, except on such urgent necessity, and to hamper them with an elaborate procedure would be virtually taking away the unrestricted right of sale which he now enjoys by custom. Then again there is no reason why, if a ryot wishes to sell his homestead to a brother, or his plot of land to his daughter's husband, the landlord should have a right of pre-emption at all, and should be allowed to disturb the domestic plans of the cultivator. To invest the landlord with such right would enable him to harass the cultivator at his will; all that the landlord needs for his own protection is to be able to veto a sale when it is really objectionable or detrimental to his interests. Lastly sub-section 4 of section 51 will sometimes prove injurious to the landlord. A ryot may make a really objectionable sale and the thing may not come to the notice of the landlord for six months; he is then debarred from taking any action in the matter, although the sale may be really injurious to his interests, and may have been meant by the ryot to be so."

12. *Section 59.*—The Secretary to the Eastern Bengal Landholder's Association, Dacca, objects to the limit of enhancement of money rents by contract provided for in this section, and thus illustrates his objection by an example:—"Suppose the average annual value of the produce of a bigha of land is Rs. 12-8, and the present rent of the ryot is one rupee. Under

this law the landlord can claim to enhance up to Rs. 2-8, as being ⅛ of Rs. 12-8, but cannot expect to get more than double, or Rs. 2; and even if the court should deem it to be fair from the evidence before it, to give him the Rs. 2, it cannot pass a decree for that amount, as section 59 provides that in no case shall the enhancement exceed 6 annas per rupee, or, in other words, the landlord cannot get more than Re. 1-6. Hence it is evident that the landlord can never expect to get the full benefit of the provision of the law; for even if the land should continue fertile, it would take at this rate, at least 50 years to get his Rs. 2-8, for the rent once enhanced cannot be disturbed for 10 years, as provided for in section 78: so much for the justice of this provision."

13. *Section 64 (d) proviso.*—The provisions of this section will admit of a very fair rate of enhancement being obtained by landlords If a bigha of rice land produces 12 maunds of rice at the average of Rs 2 per maund, that would give Rs. 24 per annum as the gross profits on a bigha of rice lands; if we put it down at Rs. 20 in round numbers, that would give Rs. 4 for the landlord. At present the rent is only Re. 1-8 to Rs. 2; thus a margin of enhancement, to the extent of 100 per cent., is allowed by the section, which should be sufficient The remarks of Mr. R. C. Dutt on this point are entered below:—"These sections (62-72) provide facilities for the enhancement of rent when rent in an estate or a tract of the country is unduly low. I entirely agree with the principles embodied in these sections. There is little doubt that zemindars ought to have a share in the general prosperity of the country and in the price of food-grains; that they have not always been able to get this share is due to the difficulty of getting an enhancement of rent under the present law. The zemindar has to prove in court that the value of produce has risen, and this he finds it impossible to do in nine cases out of ten —I may almost say, in ninety-nine cases out of a hundred. It is proposed that a revenue officer will now do this for him; the revenue officer will prepare a table of equitable rates, and if the revenue officer's rates are higher than what the zemindar gets, the latter has simply to show this in court in order to obtain an enhancement. The revenue officer in preparing his table shall take into consideration any rise which may have taken place in the value of the produce. When, therefore, there has been any such rise, the zemindar will have no difficulty in obtaining his proper and equitable share of the profits.

"There will, no doubt, be some practical difficulty in working this scheme, but such difficulty will be overcome under proper instructions. No officer of a lower rank than a Deputy Collector should be deputed for such work, and such Deputy Collector should act under the orders of the Collector of the district. When the same class of land does not pay one uniform rent, minimum and the maximum should be recorded.

"Rule (*d*) of section 64 should be modified thus:—

"(*d*) To the following rule, namely that the rate of rent for any class of land should be raised only on account of an increase in the value of the average gross produce of land of that class, and when the rate of rent is so raised, the new rate shall not bear to the old rate a higher proportion than the increased value of the produce bears to the former value.

"I beg to invite your careful attention to this very important matter. My reasons for suggesting this modification are obvious. Under the existing law, the increase in the value of the gross produce is the only ground (except when the land is found on measurement to be larger than what the rent is paid for; and this ground has been provided for elsewhere in the Bill) on which rent can be enhanced; while every possible facility should be given to the zemindar to enhance rent on this ground. We should carefully provide against enhancement on any fresh grounds. Occupancy ryots have for nearly a quarter of a century been secured against enhancements, except on this one ground, and it would be taking away from them the right which they have so long enjoyed, if fresh grounds of enhancement were now created. Probably the Bill does not contemplate creating any other grounds as it does not speak of any other ground; but the point should be definitely cleared up in order to avoid unnecessary litigation. As I have stated before, every facility should be given to enhancement of rent on the ground which the law has recognised for the last 25 years; but I am confident you will agree with me in thinking that to add fresh grounds for enhancement would be unfair to the cultivators of the soil."

14. *Section* 82.—Mr. Dutt quotes the following passages from a report of the zemindars of Burrisaul:—

"*Section* 82.—This section will be exceptionally hard upon petty talookdars and tenure-holders. In very many cases petty talookdars and tenure-holders keep certain lands with certain ryots, or let them out from year to year, or for a fixed term of years, on condition of receiving a certain share of the produce, or a fixed amount of produce, and solely depend upon this produce for the support and maintenance of their family; it will be simply starving them and their family if the receipt of the produce is now commuted into money rent.' The legislature ought not to lay its hands upon such contracts freely entered into between the parties, sanctioned by the custom of the country, and prevailing from the earliest traditions of India. It may not be out of place here to remark that the sharing in the produce was the only way in which rent would be received in good old times, and that money rent is but of recent origin." Mr. Dutt says:—"There is some force in these remarks, especially in reference to talookdars and tenure-holders on a small scale, who let their limited property on condition of getting one-half of the produce for the maintenance of themselves and their family. A free right of commuting such rents into money rent cannot be bestowed on ryots without causing some hardship on them; on the other hand an express provision is necessary

to prevent commutation of money rent in rent in kind without sanction of some revenue officer. The maximum limit of rent payable in money by occupancy ryots is one-fifth the value of the produce, while the maximum limit of rent payable in kind is half; many zemindars, especially in Behar, will therefore be under a temptation to commute money rents into rent in kind wholesale, and an express provision of law is necessary to stop this."

15. *Section 83*(1).—I do not exactly understand the provisions of this section Are the lists to be prepared for each separate market? If so, the work to be done annually will be enormous in some districts: the marked prices in the mofussil are very diverse.

16. *Section 98.*—Mr. Dutt remarks:—"Section 98 contains an excellent and very necessary provision. I have consulted some civil court officers on the provisions of this section, and they all entirely agree in thinking that they are necessary and sound, they go further, and say that, though the number of instalments may be four, a suit for arrears should not be allowed to be instituted so often, and indeed should not be entertained till after the close of the year; thus, if Ashar, Aswin, Pous, and Chait be fixed as the time for the instalments, the ryot failing to pay the portion of his rent due by the Ashar kist, or by the Aswin kist, should not be sued immediately on the following month, but after the close of the year When a decree is given, the interest may be calculated from the very month on which the instalment for rent was due, and such a provision will keep a ryot punctual in payment according to instalments; but to allow four suits to be brought in the year will be needlessly harassing the cultivators, and needlessly increasing the work of civil court officers. In these suggestions and arguments I entirely agree.

17. In my opinion, the instalment for paying rent should be so fixed that there should be three payable in the year, two large and one small; thus, taking the rent to be 16 annas, seven annas might be made payable in September-October, as then the ryot has got in his autumn rice and his jute; seven annas in January, as then the ryot has got in his winter rice and cold-weather crops generally, and at these two above periods he will (if ever) be best able to pay in his rent: a small instalment of two annas might be made payable in June.

CHAPTER IX (*c*).

18. The Dacca zemindars object to the details which the receipt is to specify and write:—This will not facilitate the collection of rent, but will throw such obstacles in the way of ordinary village putwaries and gomastahs that they will obey the rule more in the breach than in the observance thereof, and will oftentimes commit such blunders as to throw everything into confusion. Some simple facts connected with the rent of the holding should only be stated, such as the name of the tenant, the date of payment, the name of the landlord, the amount paid as arrears and current rent, &c. I agree in these remarks, and am of opinion that the forms should be as simple as they possibly can be made.

19. *Sections 103-107* (*d*).—Occupant and ordinary ryots cannot, it appears, deposit rent under these sections.

20. *Section 103* (1) (*a*).—I agree with the remarks made by the Burrisaul zemindars that "the money ought to be tendered to the landlord before making a deposit to the officer appointed to receive the deposit"

21. *Section 119.*—The Burrisaul zemindars say:—"This section is very hard and inequitable; the limitation put to money-rent is altogether uncalled for, and will work prejudicially to the real interest and improvement of the land." But Mr. Dutt entirely differs from them, and says:—"It will not only not be injurious to improvement of land, but it is essential to such improvement that the actual cultivators are not rack-rented, and that there is a limit set beyond which their rent should not go: that limit, with reference to ryots and under-ryots, *i.e.*, with reference to all the cultivators of the soil who do not enjoy occupancy right, has been fixed at $\frac{5}{16}$ths of the gross produce of the land, and I do not see what objection could be taken to this: zemindars will not be affected by this section at all, the only class of men who will be affected by this section are lazy superior ryots, fast drifting into the status of middlemen, who sublet their lands and try to exact a high rent from the actual cultivators in order to obtain a large margin of profit to themselves after paying their landlords. It is only proper that this lazy class should be discouraged, and that a limit should be set to their profits and exactions from the actual cultivators: it is only proper that the actual cultivators should be protected. I have remarked in paragraphs 3 to 6 that, under the present provisions of the Bill, a very large class of ryots will be unable to acquire the right of occupancy; it is all the more necessary therefore that some protection against undue exactions, such as is contemplated in section 119, * * * * should be bestowed on this large class of the actual cultivators of the soil."

I quite agree with Mr. Dutt in his views. Five-sixteenths of the annual value of the estimated gross produce would give a figure some four times the amount of rent now paid by ryots, and should therefore be sufficient.

22 *Section 128.*—Mr. Dutt states, in opposition to the Burrisaul zemindars, that:—"As agricultural prosperity and the improvement of the soil are the main objects of the present legislation, section 128 should, I think, stand as it is. Under the provisions of the present Bill, a large class of the actual cultivators will be incapable of acquiring occupancy rights, and it would be ruinous to agricultural progress if this large class were stopped from

making any improvement at all without the landlord's permission; it is well known such permission is seldom given without a heavy and almost prohibitive *salami*."

23. The only restriction I would impose is on the digging of tanks. This, if not looked after, may cause serious damage to landlords. A ryot in a fit of enthusiasm or recklessness will dig a tank in the midst of some first class lands, and then when the fit is off him leave the tank to be covered with rotting vegetation, and take no more trouble for or care of it, thus causing an eyesore and nuisance instead of goods. I have seen many such cases in my long experience in Eastern Bengal.

24. *Section 129.*—The Dacca zemindars say: —"If a ryot is evicted from a holding in default of payment of rent, there is nothing in this section which will prevent his demanding compensation from the landlord. This is very unfair. This is encouraging a defaulter; while it is the duty of Government (considering the stringent sun-set law) to afford every facility to landlord in the realization of rent."

Government must afford all possible facilities.

25. *Section 133, proviso.*—Mr. Dutt writes:—"The second clause of the section wisely provides that lands should not be measured oftener than once in ten years. The zemindars' desire an exception to be made in case of chur and jungle lands: I think the zemindars' contention to be reasonable and fair."

I agree with Mr. Dutt in thinking that chur lands in this part of India should be excepted. This section would prove a cause of heavy loss of revenue to Government, if applied to Government khas estates, which are nearly all chur lands.

26. *Section 134.*—In Mymensing tenants often refused to come forward and point out their holdings when the landlord was measuring. Zemindars very often are wholly ignorant of the exact lands held by their tenants.

27. *Section 142 (e).*—These sections will entail on Government a good deal of cost, and the Government pleader will have to attend, and his fees to be paid. I do not see why the Collector should not have the power of issuing the notice and making the order. The Collector is generally quite as experienced an officer as the Judge.

CHAPTER XI.

28. The provisions of this chapter appear to me to be good, except those in the proviso to section 160. This proviso should, in my opinion, be cancelled, as it will apparently admit of the whole thing after it has been settled by the local Government being re-opened, and the whole quarrel or dispute begun over again under some pretext afforded by these four clauses. This, if passed as it is, will, in practice, probably, render the whole chapter null and void.

29. *Section 179* (1) —As distraint will be made by the civil court, I would substitute the words "High Court" for the "Board of Revenue," as entered in this section.

30. *Sections 191-206.*—Mr. Dutt reports that the civil court officers with whom he discussed the matter "are of opinion that very great facilities are afforded. They say that the majority of the suits could be disposed of still more speedily, if section 196 was so modified as to allow evidence to be recorded in a summary manner in non-appealable cases. Zemindars, whom I consulted in the matter, expressed a desire that the same simple procedure, which was adopted by Deputy Collectors under Act X of 1859, may be followed by munsifs in rent suits. I mention these suggestions in accordance with the wish expressed in paragraph 117 of the Statement of Objects and Reasons.

These suggestions are good.

31. *Section 198 (b).*—The Sub-divisional Officer of Manickgunge, Babu Bepin Behari Mookerjea, says:— "If the local Government be authorized to empower officers, as provided in this section, to exercise final jurisdiction in suits for arrears or for penalty when the amount claimed does not exceed Rs. 50, the power is very likely to be vested in munsifs. I think this will be of great advantage to landlords, as it will enable them to have their rent far more speedily realized than at present. The proviso to this section, however, empowering District Judges to call for the records, and deciding the case on motion would be calculated to delay the ends of justice by enabling a party against whom a decision is passed in the court of the first instance to appeal in effect from that decision. This would defeat the very object for which the section has been framed. If the courts can be entrusted with the powers of a Small Cause Court without any such proviso, it is difficult to see why similar confidence should not be placed on them in matters of simple arrears of rent and penalties."

32. The Dacca zemindars say:—"The limit of Rs. 50, in clause (6) of this section, is very high. This amount will cover the majority of rent suits, and as such cases will, in the first instance, be tried by a Munsif, an appeal should lie from his decision to the Judge or Subordinate Judge."

I do not see why the provisions of Act VII (B. C.) of 1880 should not be extended to zemindars in cases where rent is due (there being no dispute as to the rate); the zemindar might apply to the Collector in the same manner as is now done by a manager of a court of wards estate, the cost of an extra Deputy Collector to do the extra work, might be paid for out of fees to be levied at so much per cent. on the amount of rent to be realized.

33. *Section* 199.—The Dacca zemindars say:—"Section 199 is new, but is not likely to be of any use, and will certainly be limited in its application. The ryot who disputes the plaintiff's claim, is not likely to act so foolishly as to admit that the arrear is due to him; such cases will be very rare, and will not be of any help to the generality of landlords. What

would really facilitate the realization of arrears would be to provide for the absolute forfeiture of the right of occupancy on non-payment of arrears of rent, either on the due date, or, at the latest, on the fifteenth day before the last day of the next payment of the Government revenue, provided the arrear be established to the satisfaction of the court where the suit will be tried; or let it be provided that the ryot should deposit in court the amount sued for before filing his defence, if the suit be a contested one, of course, reserving his power to sue the landlord for damages, should the claim turn out to be false, or should the claim be for a greater amount than he is entitled to get. Without some such stringent provision, it is vain to hope that the ryot will be regular in his payments. The provisions relating to distraint are, no doubt, favourable to landlords, but distraint is almost unknown in East Bengal.

No. 335G—C. dated Chittagong, the 30th June 1883.

From—E. E. Lowis, Esq., Commissioner of the Chittagong Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

With reference to your No. 351A, dated the 29th March 1883, I have the honour to submit the following remarks on the proposed Tenancy Bill.

2. I have obtained the written opinions of the Collectors of Noakholly and Tipperah, as well as of Sub-Divisional Officers and others, and I have personally conferred on the subject with the Collectors of Noakholly and Chittagong. The Chittagong land-owners have also favoured me with their views, which they desire should be laid before the Board. I accordingly forward their petition in original.

3. Speaking generally, I may say that the introduction of this measure is viewed by all whom I have consulted on the subject with the gravest apprehension, as tending to embitter the relations between landlord and tenant, and likely to lead to a crop of litigation, with all its accompanying frauds and chicanery, which must in the end injure and not benefit the ryot. These views have been expressed, not only by landlords, but by native officials unconnected with land, and they are based mainly on the conviction that the provisions of the Bill do not deal with facts as they really exist, but seek to evolve and insist on theoretical privileges, as appertaining to the ryot, which that class have never enjoyed, and which they are for the future to enjoy at the expenses of the landlord.

4. These apprehensions, I may add, are not allayed by the remarks contained in paragraph 10 of the Statement of Objects and Reasons, that the present Bill is a mere prelude to what may be expected to follow, when the whole law on the subject comes to be codified; and it is urged that, if this measure is not to be considered as in itself complete, it is hardly worthwhile introducing it, since the effect will most inevitably be a crop of litigation and general disturbance of the agricultural community.

5. I believe, however, that the present Bill does enunciate the principles on which any future codification of the law will be based, and indicates the lines which future legislation will follow. I do not therefore share the apprehensions noticed above, as to want of finality in the proposed measure, though I do most certainly concur in the opinion that its provisions are quite inapplicable to the condition of things, and the system of land tenure existing in this division, and more particularly in the districts of Noakholly and Chittagong.

6. I would, however, wish to guard my remarks from misapprehension, by saying that I discuss the Bill and record opinions regarding its provisions, only so far as these refer to that part of the country with which I am more intimately acquainted; with the applicability of the proposed law to other parts of Bengal, with their varying conditions, I will not deal, but will confine my remarks to that tract of country with the administration of which I have had most extensive practical experience. As regards Behar I have nothing to say; I have never served in that part of the country. I know nothing practically of its system of landed tenure, and I cannot say whether some relief to the cultivating classes is urgently demanded or not; but as regards this division, I feel sure that any change in the existing law is not urgently called for; and that the provisions of the Bill which appear to have been drawn to meet the case more especially of Behar, do not apply to this part of the country. In so saying, I do not for one moment wish to detract from the ability which has been displayed in drawing up this Bill, or from the soundness of the arguments wherewith its provisions were so ably supported by the speeches in Council; but at the same time, I cannot help observing that the proposed measure is intended to meet a want arising in another province, and presupposes a different condition of things; though this is an objection that, in dealing with revenue matters, must always arise, since it is almost impossible that any law dealing with tenant-right could be framed, comprehensive enough to include the different systems prevailing in Tirhoot and Chittagong. Almost as well might we expect one law to govern the landed interests in England and France; the former with its large landed proprietors, the latter with its minute peasant proprietary holdings.

7. The present Bill having been apparently framed mainly to meet a difficulty in Behar, its provisions are, I presume, based on data supplied by the existing state of things there; the arguments in support of it therefore fail, when we seek to apply them to another part of the country, as they assume a system of tenure which does not exist in these parts, and treats certain privileges as attaching to classes which do not in fact enjoy them now, and which never have enjoyed them in time past.

8. The essence of the Bill is the protection of the ryot; and though no definition of a ryot has been given, it is plain that, in the proposed law, the term is almost synonymous with cultivator, any one in fact who holds land for the purposes of agriculture, horticulture, or pasture; every such ryot who holds land in a village for a period of 12 years is a settled ryot, and every settled ryot has rights of occupancy. In other words, certain very considerable advantages are held to accrue to the person holding the position of a khudkhast ryot, that is, of a villager who cultivates land in his own village. These khudkhast or settled cultivators, it is said, were the persons whom it was the policy of the earlier Legislators, at the time of the decennial settlement, to protect; it was in their favour that a reservation was made when the State lands were made over to the zemindars; and for their benefit that Act X, and subsequent legislation, has been undertaken.

9. An important element in the idea of a ryot, as thus expressed, is personal cultivation; and, I take it, personal cultivation, as distinguished from causing the existence of cultivation, is a distinguishing feature in the khudkhast ryot, as understood by the supporters of the proposed law. I therefore propose to enquire to whom in this part of the world the status of khudkhast ryot may be held to apply, though the word itself is not, I may add, in present use. In pursuing this enquiry, we will derive much assistance from a consideration of the record of the survey and settlement of this district, undertaken in 1765, very soon after this tract of country was ceded to the British; the more so, as those proceedings were carried on, we may be perfectly certain, in strict accordance with native methods, and afford a picture of what the Mahomedans themselves would have done under similar circumstances, for we were, at the time, not the paramount power, but administrators of the revenue for the Mahomedan rulers of the country. Under these circumstances, it is instructive to notice on what class the assessment was then imposed; to discover who was held responsible for the State share of the produce of the land. The following note on the early history of the district, which I reproduce from a separate report on another subject, will tend, perhaps, to elucidate this subject.

10. The district of Chittagong is a long strip of country, about 120 miles long, with an average breadth of 20 to 25 miles, lying along the sea coast, and bounded to the east by ranges of hills, which run back into the Burmese territory. It is bounded to the south by Arracan, and to the north by Hill Tipperah. Although the district is narrow, it is intersected nearly throughout its length by a range of hills; and there are but few places that are not in the vicinity of broken or hilly country. Before its occupation by the English Chittagong was hemmed in on all sides by Burmese territory, and at no time, I fancy, was the hold of the Mahomedans on it, anything but slender.

11. In the reign of Akbar, the province of Chittagong seems to have been overrun though it was probably not properly annexed. It was assessed in his time, by estimation as yielding a revenue of Rs. 2,85,607; there is nothing to show, however, that this amount was ever realized. This was in 1552, and subsequent to that, the country was again overrun by the Arrakanese. From the end of the sixteenth century, however, a tide of emigration seems to have set in from Bengal, and more particularly, it is said, from Gour, the old capital of Bengal. These emigrants settled on, and cleared plots of jungle, and were known as khoshbash ryots. In the then disturbed state of the district, and favoured by the jungly and hilly nature of the country, most of these khoshbash settlers, very probably, paid little or no rent to any one, and thus there was developed amongst them a spirit of independence which enabled them, later on, to assert their right to separate recognition. I may add that there is no trace of any village community ever having existed, but each plot of clearance in the jungle, or series of plots, came to be claimed by the person, through whose exertions or influence reclamation had been effected. There never was any village community with resident cultivators, entitled to privileges, as against non-resident cultivators, but mere aggregates of scattered reclamation, the owners of which held together no doubt for purposes of mutual support and defence, but who were quite independent, so far as possession of the land went.

12. Chittagong was again overrun by the Mahomedans, for in 1658, it again figures in the rent-roll of Sultan Shah. It must, however, have again lapsed into the hands of the Burmese, for we find it was again conquered by Alumgeer in 1665. During all this time emigration seems to have continued, and small settlements of "khoshbash" ryots appear to have sprung up in the different directions. The districts continued under the Mahomedans till 1760, when it was ceded to the English.

13. As soon as the Mahomedans finally established themselves in the country, the first step, of course, was to collect rents from the "khoshbash" ryots, already settled, and these men, to save themselves from the annoyance and trouble of visit from the revenue underlings, attached themselves to some person having influence at the Nawab's court, and paid their revenue through him, and so these self-elected agents came to be called tarafdars طرفدار from the Urdoo طرف on the part of a partizan. Hence it is that each taraf, or permanently-settled estate, is even now a mere aggregate of talooks, as these khoshbash holdings came to be called, the component parts of each being scattered in different villages and different thanas. Such a thing as a compact estate is unknown in Chittagong. The talookdars must have chosen their own tarafdar, otherwise we would not find every estate, whether large or small, scattered piecemeal over the district. Had the tarafdars obtained the land and settled talookdars, or had Government farmed out the collections to tarafdars, it is quite clear that

such a fragmentary division would have been avoided, opposed as it is, to all facility for collection. Looking to the facts as they stand, it seems to me perfectly clear, that the popular belief is the correct one, *viz.*, that the talooks were the original clearances, and that, for their own convenience, these talookdars elected to pay revenue through the agency of certain individuals, known as tarafdars, an aggregate of such scattered holdings forming a taraf.

14. In short I believe the tarafs to have been recognized only as affording a means of collecting revenue from the scattered independent holders, the tarafdars having at first no proprietary title, nor being vested with any authority over waste, which was open to any one to settle on and clear, the only condition being sanction in the shape of a pottah, not from any tarafdar, but from the Nawab, or representative of the Sovereign, such clearances being assessed in due course by Government officials, but paying revenue so assessed through some tarafdar. After some enquiry, I have been fortunate enough to discover one of these old Nawabi grants; it is in the possession of one of our noabad talookdars, one of whose ancestors was an officer at court, and at one time possessor of much property. I have not been able to trace the particular talook or talooks that arose out of this permission to cultivate; but it seems to indicate the manner in which these talooks continued to come into existence, even after the Mahomedans had finally conquered the country, and to prove that these holdings were not created by, or under authority of, the tarafdars, but held directly from Government.

5. I give below a translation of the pattah alluded to:

"According to the kabuliyat executed by Mamea Ashek, this pattah is granted to him on the following terms, for the jungle land situated in mouzah Shuluk, in chakla Rangonia of Islamabad, within the boundary noted on the margin, exclusive of the land contained in the pattahdars of pergunnah Nezam Nagar that he will bring the land into cultivation by inviting settlers who have no fixed abode for themselves. He will receive an allowance of three kanis and four gandas for each droon of waste which he makes culturable; and remaining quantity of land will be settled with him, and he will have to pay the Government revenue. It should be remarked that the khanabari and nankari lands will be settled at noabad rate, besides he will not have the responsibility of making bridge, &c.

South by Gur Cherry, north and east by Kazi Mahomed Sagri's abad land, Raktcherry and Qelonea nala, and west by Shopleja dhebee and Hatia tank.

	Rate.	R	A	P.
First year, 1120M.S.	Mâp	(Rent free.)		
Second year, 1121M.S.	Ryoti	1	8	0
	Unintelligible	0	12	0
	Khamar	0	8	0
Third year, 1122M.S.	Ryoti	3	0	0
	Unintelligible	1	8	0
	Khamar	1	0	0
Fourth year, 1123M.S.	Khamar	2	0	0
Dated 22nd Joomadil awal, 1120M.S.	Ryoti	6	0	0
	Unintelligible	3	0	0

The pattah bears no signature, but is stamped with a Government seal, and bears date 1120 Maghee, equivalent to 1758 A.D., or only two years before the cession of the province to the East India Company. It will be observed that the intention evidently was to allow the grantee to bring as much land as he could under cultivation; such land to be hereafter subject to measurement and assessment, a proprietory allowance of more than one-fourth, or over four kanis, being granted for every droon of land then found to be under cultivation. The allusion made to the noabad rate, on the khanabari and nankari lands, means that they are to go rent-free; at least such rent free allowance was made when we come to measure the district a few years later, a measurement which was probably undertaken in strict conformity with Mahomedan usage.

16. It would appear that the Mahomedans merely confirmed the usage which they found prevailing, and without going down to the actual tiller of the soil, contented themselves with assessing the customary rate of rent on the reclaimer of waste, and looking to him for the due discharge of the Government demand, left him to make what arrangements he could to meet it The position thus assigned to the khoshbash ryot was, however, something more than what any one supposes to attach to that of ryot now, for the former were allowed a deduction, free of rent, of one-fourth as khanabari and nankar or pattahdari, *i.e.*, space for a house and offices, and allowance as proprietor or holder of the Government permission to cultivate. These men were something more than what we would call ryots, but it is evident that the Government did not look below them, or seek to record or regulate any rights below theirs. By custom and tradition the privilege to hold at a customary rent has attached to the person bringing land under cultivation, and he is the person entitled to consideration, and not the actual cultivator. The same idea prevails to this day; and in discussing this matter with talookdars, I have been told that the right to the land is vested in the person who, by his exertions, causes cultivation (chash kerwata), and not in the person who merely tills the ground (chash karta).

17. It is suggestive also to note how even to this day, in popular estimation, a distinct proprietary title is held to attach to a talook; ask almost any respectable looking Mahomedan villager you meet what he is, and he will answer a zemindar; by which he means that he has a share in possibly a small talook, only a few acres in extent. A tarafdar is not a zemindar, in popular estimation, but only a tarafdar; while the real zemindar, the proprietor of the soil, is the talookdar. The retention of this popular belief is all the more singular, as

the policy of our Government, for the last century, has been to exalt the tarafdars into the position of land owners and absolute proprietors.

18. By such means as I have described, the large tracts of jungle existing in Chittagong were taken up, in the first instance, by talookdars, or "khoshbash" settlers; while the work of subsequent reclamation went on by the agency of the same class; the cultivation, when discovered, being assessed, but assessed less one-fourth, granted rent-free as an allowance for the talookdar, under the designation of khanabari and pattahdari, *i.e.*, for homestead lands and allowance due to the holder of the pattah; these *buasi* proprietory ryoti-holders being the only recognized ryots, the only persons who were liable for the share of the produce of the country which Government was entitled to claim. Had this district never been measured, much of what I have asserted might be held to rest on mere surmise; but fortunately the district was measured, and the records of that measurement afford proof of the status and position accorded to the talookdars.

19. As I have said, the district of Chittagong was ceded to the British in 1760, and measures were at once taken to ascertain the resources of the country, and the revenue derivable therefrom. To do this, it was of coure necessary to ascertain what amount of land had been brought under cultivation at different times by the reclaimers of waste, what was the proper amount payable, and by whom. Accordingly, in 1765-69, the entire district was measured, and engagements entered into with the tarafdars for the amount of revenue assessed on the talookdars. Undertaken as it was, immediately on our assuming charge of the administration, we may safely assume that this measurement was made in strict accordance with native ideas, and that the state of things which records reveal was such as would naturally appear to the native mind without any admixture of European notions.

20. I need not enter into a minute description of these old records; suffice it to say that they show the assessment to have been made on the talookdars or khoshbash ryots; the rents paid by actual cultivators are not recorded, their names only appearing in the chittah or measurement paper, which merely shows that when the amin came round, a certain person was in possession of certain plots, as cultivator, subordinate to some talook. The tarafdars again were liable for the assessment imposed on the aggregate of talooks, which went to constitute the taraf. The prominent feature in the proceedings is the khoshbash ryot or talookdars.

21. At the time of the decennial settlements, the engagements with the tarafdar became fixed and permanent, and it was the intention of the Government of Lord Cornwallis to fix also the demand against the talookdars, for reference is made to them, in the correspondence of the period, as our fixed jumabandi ryots, while the necessity of seeing that the zemindars do not exact from them sums in excess of their engagements, is insisted on. I have no doubt, that, in fixing the demand against the tarafdars or zemindars, it was the intention of Government that the rents payable by the jumabandi ryots should be limited also, and that they should not be called on to pay any amount beyond that entered in the jumabandi; but, at the same time, I do not find that any limit was implied, or intended to be laid, on the amount payable by the cultivators to the talookdar ryot; and as a talook might comprise land in half a dozen villages, it follows that the privileges of the ryot attached not to the cultivator, but to the person who personally, or whose predecessors, caused land to be reclaimed.

22. The authorities of the time evidently regarded these talookdars as the true ryots, and indeed they were khud khast ryots in the fullest sense of the word, for though they could hold land in more villages than one, the lands so occupied were really *khud*, their own, that in which they had a most undoubted right, though the cultivation might be carried on by pahikasht or pahikhasht ryots, *i.e.*, by non resident cultivator, or migratory tenants-at-will. The land in a state of nature belongs to the State, but it was held that whoever cleared it, acquired a *quasi*-proprietary title, even though he might not be the actual cultivator; there was clearly no intention of relegating such a person, simply because he had cultivators under him to the position of an intermediate holder; for the responsibility of the payment of the State revenue rested upon him and not on the cultivators, who, in the first instance, must generally have been migratory and non-resident.

23. Gradually, however, some of the rights attaching to original reclaimers have passed to their subordinate tenants, not, however, in virtue of long occupation by the latter. At first, as I have mentioned, the khud-khast ryot generally maintained cultivation by means of migratory tenants, who held on to the land only so long as was convenient to them to do so—a system at once troublesome, uncertain, and involving risk, which the original ryot was only too glad to escape, by letting to permanent tenants. In order, therefore, to secure such permanent tenants, it became necessary to grant permanent leases to persons of the cultivating class, who took the places of the original reclaimer, and by payment of a fixed rent, relieved the former of all the trouble and risk of dealing with the migratory pahikashts. These holdings were called itmams, and did not necessitate actual residence in the village where the land of the itmam might be situated.

24. The itmam is only a modified form of the original holding, bereft of its *quasi*-proprietary character. The original conception of the lease includes fixity of tenure, and fixity of rent, but I do not find that the privileges of khanabari and pattahdari were ever handed on, or could be handed on, to an itmamdar. An itmamdar can grant a dur itmam, or a "kaimi" (permanent) ryoti lease, but in the chain, from the original reclaimer downwards, there must always be a lease, which is generally permanent; mere occupation of the land or residence in the village goes for nothing. The root of all sub-divisions is the 1,765 talookdars, from him they descend, partaking at any rate of his privilege of fixity of tenure and rent. Below these again come the mass of karsha cultivating ryots, who are practically

tenants-at-will, sometimes holding on a pattah, often on mere verbal agreements, who settle year by year the amount of land they intend to take up and the rate of rent, and who may cultivate the same lands, if it suits them, for a series of years, but who are not responsible for more than the year's rent, and may cultivate more or less land at pleasure.

25. It will be obvious, from what I have said, that the system in existence here is very different from that contemplated by the proposed law: here we do not find the cultivator acquiring certain privileges in virtue of his residence in a village, and continuous occupation of the village lands; but a khud-khast ryot here is one who derives his title from original reclamation, and enjoys certain privileges in return for the risk he incurs in keeping land under cultivation.

26. In Chittagong there is great variety in the tenure of land; some talookdars hold as of old, dealing directly with "chashas," and making settlements year by year, for more or less land, at higher or lower rates, according as the season is good or bad, promising or otherwise; others cultivate a portion and have cast the burden and responsibility of treating with chashas on to itmamdars; again some itmamdars cultivate with their own hands, some do not; some treat with chashas, some have granted dur itmams; but whatever may be the arrangement, the introduction of the new Act would be most disastrous, for every chasha could then lay claim to occupancy rights in lands belonging to half a dozen different estates. Every village comprises, as a rule, lands of several estates; without changing his residence, therefore, a cultivator could cultivate fresh land every year, and at the end of twelve years claim occupancy right in them all. It is not the zemindar who arbitrarily shifts his ryots, but the cultivators who change their holdings. It is almost impossible, for one who has not had practical experience of this district, to understand the way in which land is mixed up in it; a kaini ryot, in addition to his own patch, cultivating, as "chasha," lands belonging to a neighbouring talookdar; an itmamdar letting his lands which are at a distance from his house, while he cultivates as "chasha," land belonging to some one else nearer home.

27. The Chittagong landlords in their petition have alluded to this marked peculiarity, and referred to some figures given in Sir Henry Rickett's report on noabad, foot note to page 26, volume I of printed selections, which show the extreme diversity of tenure, which may be found, even in a very small village. Sir Henry Rickett writes:—

"The village contains 356 acres only; the tenures are distinguished by different colours. It is to be borne in mind that each description of tenure is held by many proprietors. There are no less than 213 holdings in this small village as follow:—

Tarafs	35
Talooks under khas tarafs	33
Noabad talooks	30
Noabad plots left unsettled	29
Lakhiraj mehals resumed and under enquiry	73
Ghosals' talooks	3
Confirmed rent-free	10
TOTAL	213"

In this village, I have no doubt that an interchange of lands, such as I have noticed, takes place; and that the small proprietors should regard the introduction of the proposed law, with apprehension is not surprising. The Bill is, in its principle, unsuited to the existing state of things here, and should not be extended to this district.

28. In Noakholly the state of things is much the same as here; estates are everywhere split up into talooks, and these again into howlas and nim-howlas, which latter very much resemble our itmams and dur itmams; there is no such allowance in this district as khanabari and pottahdari; but the talookdar has his land measured by a longer rod than he allows to the cultivating ryot; the howladar has the privilege of a longer rod than the nim-howladar, and so on.

29. As to Tipperah, that district has not been long enough under me to enable me to master, as fully as I could wish, its peculiar system of landed tenure, which, though it differs in some respects from that of Chittagong and Noakholly, is still not the same as that which prevails further north. I find here a system of charcha measurement in vogue, whereby the proprietors discover, through charcha amins, the amount of land for which each particular ryot is liable to pay rent. So far as I can ascertain, the rate prevailing in the village is accepted for all, but the amount of land under cultivation appears to vary, the agreement between the cultivator and his landlord being often verbal. On the whole, I do not consider that the new Act should be extended to any part of my division, since its provisions are clearly unsuited for application in Chittagong and Noakholly, where their enforcement must lead to a subversion of the relations existing between landlord and tenant.

30. Besides the inapplicability of the principles of the Bill, to the conditions of this division, there are one or two of its provisions, that appear to be open to objections on general grounds.

The provisions of chapter (IX) C as regards receipts for rent, statement of account, &c., could under no circumstances be introduced into this district, where a large proportion of the holders of talooks, and even of permanently-settled estates, are illiterate people who cannot and do not keep accounts properly so-called, for whom it would be quite impossible to carry out the provisions of the law. Many of the permanently-settled estates are exceedingly small, an acre or two in extent, and the owners, often women, are really peasants, from whom it is quite hopeless to expect elaborated receipts and statements of account.

31. Then, again, as to the voiding of contracts the proposed law appears to introduce a dangerous precedent. In certain cases the provisions of the law are to be held to override contracts entered into with deliberation; and this without any enquiry whether the contract was voluntary or not. So far as my experience goes, the ryots are very well able to look after their own interests, and hardly require to be thus hedged round with protective enactments, as appears to be thought necessary; they are only too ready to evade their contracts, if it is to their interest to do so; and are quite prepared to support such evasion, by every artifice that the law renders possible, as well as by means not strictly lawful; it seems hardly expedient, therefore, to teach such men that the law does not recognize the keeping of contract, and that self-interest can be held to be a valid excuse for contravening the terms of an agreement. Cases may arise where it is evident that an unjust and one-sided contract has been entered into, as the result of deception or force, but surely such cases may be left to be dealt with by the application of the laws of equity.

32. Objection has also been taken, and with some reason, to the constant reference of every petty dispute to the civil or revenue authorities. One native gentleman writes: "A country, of which the members cannot settle their disputes without the intervention of third parties, is a country which is on the high road to ruin."

"The landlord must take no enhanced rent; the ryot must agree to no enhancement unless a revenue officer or a civil court allows them to do so. These sections altogether prevent the possibility of mutual understanding between the two parties on the question of enhancement; and I am of opinion that their tendency cannot but be highly mischievous.

"The first principal objection to the Bill, as it stands, is the impossibility of doing anything without taking the aid of revenue officers or civil courts. The work of the executive and judicial officers will immensely increase, but that is nothing to the spirit of antagonism that will arise, and the state of chronic warfare which must ensue. Let landlords and ryots have recourse to registration or litigation only when they do not agree among themselves; but let us throw no obstacle in the way of their doing so. Let us not sniff fraud in every agrarian transaction.

"It is not those who are protected all round, but those who are left mostly to grapple with difficulties that succeed in life. It is not those nations that were protected by the State that are the most enterprizing; it is those who were most left to their own resources that have become the most enterprizing. Let the ryots be protected against force or violence, let them be protected against the more serious and gross forms of fraud, but in their own future and lasting interests, I say let us not try to save them against their stupidity, carelessness, or want of activity.

"The second principal objection is the way in which contractors are treated. A contract which purports to forego a right, arising from the mere lapse of time, should perhaps not be enforced; but a contract which purports to forego a right accruing on a certain contingency, must never be ignored. Truth and honesty must be taught to the nations of India before they can reach back the place which they believe they once occupied, or before they can become really civilized. The morality which considers covenants to be duties that must be performed has still to evolve in India, and it would be dangerous to override contracts and teach the tenantry that considerations of personal convenience are paramount over considerations of moral obligation.

"Clause 2, section 73, says that a contract in a certain case made in favour of the ryot must be enforced, while section 50 protects him from contracts which are against him. Clause 2, section 74, enforces a contract which is against the zemindar, while sections 87 and 90 repudiate contracts which are in his favour. These instances will teach the ryot that there is no moral obligation in promises, and that he must always consider his own convenience in dealing with others. This is a dangerous doctrine to teach to half barbarous people. If 90 per cent. of the tenantry have been able to acquire tenant rights under a system when contracts have been held valid, there is no need now to make them invalid; the pleas urged for the proposal in paragraphs 33 and 48 (objects and reasons) do not hold good.

"Customs also, when in favour of landlord, must be ignored, and, when in favour of ryots, must be enforced, clause 2, section 73, and clause 1, section 81, lay down, &c."

33. There is much truth in the above remarks, and I feel sure that in the event of any dispute arising between landlord and tenant, in any part of the country to which this Bill may be introduced, it will be found impossible to carry on work with existing establishments, even if such agency can stand the strain of applying the provisions of the law in ordinary times.

34. In conclusion, I may remark that I have not overlooked the saving clause as regards custom, but that clause is evidently meant to apply only to exceptional cases; and when the whole set of tradition and custom in a tract of country is against the fundamental principle of the proposed law, it seems to me inadvisable to extend such law to that tract, and have most of the cases decided outside its provisions.

35. There is, however, one provision of the Bill, which must be extended to this division, and that is the one regarding record-of-right. There is no district in Bengal where the right to land is so mixed and confusing, or where we know less of the laws which govern the relations existing between the different classes of cultivators; the division of the lands is infinite, the interchange of holdings constant, and we have too long regarded the varied tenures which exist, as governed by the same laws as those of the rest of Bengal; in fact, they differ in nature and working, and nothing would tend more to strengthen the adminis-

tration, and render possible the successful working of the numerous Government estates here, than a survey of the district of Chittagong, with a public and authoritative record-of-right, and a proper understanding of their relative value.

Dated Chittagong, the 11th June 1883.

From—NITHYANUND ROY and others, Zemindars and Talookdars, Chittagong Division.

To—The Commissioner of the Chittagong Division.

WE, the undersigned land-owners of Chittagong, beg respectfully to make this petition, for consideration of Government, in connection with the Rent Bill.

2. We submit that the provisions of the Rent Bill are generally unsuited to this district. In regard to land proprietorships and tenures, Chittagong is not like other districts. It has some peculiar ties which deserve notice.

3. A reference to Sir Henry Ricketts' report, page 22, Vol. I, Noabad correspondence, will show that in 1848 there were in this district 663 *mehals*, of which the revenue was below 1 anna.

2,571	2 annas.
5,878	4 annas.
8,979	8 annas.
7,955	1 rupee.
26,046	

The number of each of the above descriptions of *mehals* must have considerably increased after that time.

4. Sir Henry Ricketts in the same report stated that in a small village, containing 356 acres, there were not less than 213 proprietors, holding the following descriptions of *mehals* :—

Taruffs	35
Taluks under *khas taruff*	33
Noabad taluks	30
Noabad plots left unsettled	29
Lakheraj mehals reserved and under enquiry	73
Ghoshals' taluks	3
Confirmed rent-free	10
	213

No note was taken at the time of the number of tenants under the 213 proprietors, but every one acquainted with this district can easily imagine that large number of tenants of different descriptions must have existed under each proprietor.

5. As an illustration of the proprietary holdings, we quote the following paragraph from Sir Henry Ricketts' report :—

"It is no exaggeration to say that such is the sub-division and enlargement of property, that in some parts a man cannot go to his field or from his field without committing a trespass. In other parts, small tenures are found divided into narrow strips, a few feet wide, one end of each sub-division joining a common pathway by means of which each petty proprietor may reach his possession. * * *"

6. The above description refers to a state of things which existed 30 years ago, but matters have gradually become worse.

7. The numerous petty proprietors, under the existing law, have no adequate relief for recovery of rents. They cannot sue for rents annually, the amounts being very small and the costs of suits being very high. They have to pay Government revenue by borrowing money. It is not only they, but the few big proprietors that we have here, who also, not being able to realize their rents, pay revenue by contracting debts, and many families have ultimately been ruined by so doing.

8. Your Honor is aware that at every revenue-sale a large number of *mehals* are advertised for sale. The proprietors in many cases submit to that being done for no other reason than that thereby they hope to induce their tenants to pay rents. They sometimes run the risk of losing their *mehals* by adopting such a course.

9. Among the big proprietors there are many here who have expressed their willingness to make over their estates to the Court of Wards. Their inability to realize rents is a great inducement for their doing so.

10. It is a fact that the ryots of this district have the upper-hand. The Government and the Court of Wards, with the exceptional procedure for realization of rents, are not able to realize rents with facility. Under the existing law we cannot obtain enhancement from tenants. When they combine we cannot even recover what is due at existing rates.

11. The enhancement law is a dead letter here. The proprietors have not been able to enhance rents according to the principles laid down in the law ; the civil courts always adhering to the strict letter of it.

12. Here there is a class of proprietors, who are also tenants. They not only cultivate their own lands, but also those of others. Their position is comparatively safe.

13. But as regards the class whose lands are cultivated by others, we appeal to your own experience, and to that of Mr. Manson, to say whether they or their tenants are in need of protection here. These tenants abandon our lands in bad seasons and enjoy our lands in good seasons ; we cannot realise our just dues from them by any summary mode.

14. In this state of our helplessness, the Rent Bill, instead of proposing to grant

adequate relief, proposes to make restrictions and limitations in respect of the existing remedies. There is to be no summary procedure for the recovery of rent.

15. The Bill certainly will be hailed by the tenants as a great boon. We continue responsible to Government for various duties as proprietors, and our lands remain liable for periodical sales for non-payment of Government revenue. But the tenants are now to be raised to the status of co-partners with us in our lands. They are to enjoy powers and privileges which we are bound to respect.

16. The Bill aims at a redistribution of property but not of liability. It does not propose periodical sales of all tenancies for non-payment of rent. It proposes to make occupancy ryots' rights transferable. There will be little objection to periodical sales of ryotees when these become transferable.

17. The Bill proposes to do away with private contracts, to put a limit to *khamar* land, to make ejectment practically impossible by limiting the *khamar* to its present extent, to give a new status to the tenants-at-will, and to make distraint entirely a process of court—all this is an interference with the just rights of the landlords.

18. The Bill makes a distinction between *khamar* or private land of the zemindar and ryoti land or land destined for occupation by ryots. It provides that the existing stock of *khamar* land cannot hereafter be increased. (Chapter II.)

19. It provides that there can be no contracts over-riding the incidents attaching to the right of occupancy. These incidents are—(1) That the ryot may use the land in any manner which does not render it unfit for the purposes of the tenancy. (2) That he may make improvements on it as provided by the Bill. (3) That he must pay rent at fair and equitable rates as determined by the Bill. (4) That he cannot be ejected except under a decree passed for breach of certain conditions, &c. (5) That he may sub-let the land. (6) That his interest is to be transferable, subject to the certain rights reserved to the landlord. (7) That his interest is to descend. (Section 50.)

20. The bill gives the landlord a right of pre-emption in respect of occupancy tenure. The landlord so acquiring occupancy land may keep it for *nij* cultivation, but if he lets it the tenants shall have occupancy right. (Chapter V.)

21. The Bill prohibits all contracts for enhancement of rent by which a ryot engages to pay a rent more than six annas in the rupee higher than the existing rent, or more than one-fifth of the estimated annual value of the gross produce of the land, where the improvement is neither due to the landlord nor to the tenant, the tenant shall share half-and-half, but the rent shall not be raised in any case beyond one-fifth or 20 per cent. of the value of the gross produce. (Chapter VI.) Existing rents shall not, in any case, be more than double. (Section 76.)

22. The Bill allows sub-letting by occupancy ryots, an ordinary ryot or tenant-at-will shall be subject to rents agreed between himself and his landlord, but if he does not pay, he shall not be liable to be ejected, unless the landlord makes good the value of improvement made by him and gives compensation at ten times the annual increase for disturbance. In addition to this a landlord shall not eject an ordinary tenant except (*a*) for arrears of rent; (*b*) on the ground that he has broken some conditions; (*c*) or that he has refused to agree to an enhancement. (Chapter VIII.)

23. The ryots under the Bill shall have a preferential right to make improvements and to receive value of improvements when ejected. (Chapter X.)

24. The power of distraint is retained in a modified form, but it must be made entirely a process of Court. (Chapter XIII.)

25. In rent cases there shall be no appeal against Munsif's decree when the amount decreed does not exceed Rs. 50. (Section 198.)

26. A suit for relief by forfeiture shall not be unless the landlord has allowed the tenant opportunity to pay compensation for breach of conditions. (Section 202.)

27. In cases of large occupancy holding, they may be first put up for sale in execution with incumbrances, but if the sale proceeds do not cover the amount decreed, then without incumbrances. (Chapter XV.)

28. Section 45 defines how the status of a settled ryot shall be acquired notwithstanding any contract to the contrary.

29. We submit that the provision as to *khamar* is against all customs and usages of the district. We do not see why Government should tell the zemindars that they should keep so much land and no more, and that others should have the rest?

30. It appears that a settled ryot, as described in Chapter V, may have a right of occupancy in any land in the village without any reference to the period of his occupation, and in spite of any contract under which he held it. This is a radical change in the existing law.

31. The Bill for the first time creates a new kind of tenants-at-will. They are to have compensations for improvements and for disturbances amounting to ten times the yearly increase, which is excessive and unjust. This is an idea quite novel to our land system.

32. The value of *noabad* land in this district has already fallen from another cause. If this Bill become law, the value of other lands will also fall. Instead of inflicting us therefore with this Bill, the Government, if it considers the zemindar class unnecessary, may do away entirely with that class by granting reasonable compensations to them.

33. In fact, the proposal for further extension of occupancy right, for their transferability and the various restrictions to freedom of contract as also the limit of the maximum of enhancement to a fifth of the value of the produce if carried out, will totally interfere with the vested rights of the zemindars.

34. The zamindars' rights have been enjoyed by them at least for the last 90 years. These have been acknowledged by the law and the courts of British India; on this acknowledgment the zamindars have spent their capital; are these rights to be now interfered with on entirely insufficient grounds?

35 If a tenant made contract with any of us under Act X that his occupation should never give him any occupancy right, why should Government now declare that that contract is null and void? Then, again, if we have *khamar* land which came into our possession by a former tenant's relinquishment, why should it become the property of a ploughman, because it was let out wholly or partly for one or two years, and was not held by us continuously for 12 years?

36. According to the Bill, if one landlord purchase an occupancy ryoti and then let it, the tenant shall have occupancy right Then why shall the landlord pay the price as a fine? In the second year, if that tenant again wish to sell, shall the landlord pay another fine?

37. In this district the value of the rent-suit is generally below Rs. 50. The restriction imposed upon appeals is quite unsuited to this district.

38. The changes proposed are generally objectionable. The Bill has filled the Chittagong zamindars with great apprehensions. If the Bill is to be law, they cannot hope to be free from litigation to an alarming extent.

39. We pray, therefore, that should the Government finally decide upon passing the Bill in its present shape, Your Honor will be pleased to recommend the exclusion of this district from its operation.

No 586 T. R, dated 24th August, 1883.

From—Under Secretary to Government, Bengal.

To—Secretary to Government of India, Legislative Department

In continuation of Mr. Bayley's letter No. $\frac{179}{787}$ C. R., dated the 13th August 1883, I am directed to submit, for the information of His Excellency the Governor General in Council, the accompanying copies of reports* on the provisions of the Bengal Tenancy Bill, 1883, from the Collector of Bankura and the Deputy Collector of Howrah.

* Letters from the Collector of Bankura and the Deputy Collector of Howrah, enclosed with letter No. 477, dated the 30th July, 1883, from the Commissioner of Bardwán.

No 477, dated Chinsurah, the 30th July 1883.

From—JOHN BEAMES, Esq, Commissioner of the Burdwan Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

In continuation of my No. 339, dated 22nd June 1883, I have the honour to submit the reports noted on the margin regarding the Bengal Tenancy. The other reports received by me contain nothing worthy of notice.

Copy of Bankoora Collector's report and Mr. Sceales' report in original, and Covenanted Deputy Collector of Howrah's report

2 The Collector of Hooghly has, I find, quite unnecessarily sent a copy of his report direct to the Board.

No. 2986. dated Bankoora, the 21st June 1883

From—C. A. SAMUELLS, Esq., Collector of Bankoora,

To—The Commissioner of Revenue for the Division of Burdwan.

In accordance with your order, communicated in your No 38 of the 14th instant, I beg to offer the following observations on the revised Tenancy Bill.

The Bill is said to be an amending and consolidating measure; but it appears to contain certain principles, which, though beneficial, are certainly novel—such as the landlord's right of pre-emption of the occupancy right and the principle of compensation for disturbance. It will be advisable to review the provisions in order, offering such remarks as occur to me on each, and finally giving my opinion on the measure as a whole, and its probable effects.

CHAPTER II.

From the use of the term "zeraat," as applied to khamar lands, in the Statement of Objects and Reasons, I am inclined to think this chapter has reference chiefly to Behar. I believe khamar lands were not very common in Bengal. The chapter and definition is almost superfluous alongside of chapter X, under the provisions of which the ryot's interest merges in that of the landlord, unless he declares to hold as a ryot within three months. Neither chapter will prevent the zemindar who purchases occupancy rights from holding the land khas if he wishes; and it is much to be feared that, as that will be the only method open to him of barring occupancy rights, he will now largely resort to this practice, and the result will be a large increase of khamar land—being just the result which the Bill is designed to prevent. There are other ways in which khamar land must come into existence despite the wishes of the zemindar and the Act, namely, where a ryot dies, or vacates his holding or surrenders, and no one can be found to take his place. These lands must remain in the possession of the zemindar as his khas land; and it is therefore scarcely a subject for enactment. Even if the register is made the land is subject to decrease, and, as I have shown above, to increase also, so that the

survey will be merely waste of time, and prove a fertile source of litigation. Another point requiring decision will be, whether all lands held by "bhag-jotedars," or cultivators, who pay a share of the produce as rent, is to be considered "khamar" under the Act. It is generally so considered by the natives, but the tendency of this Act is, if I understand it properly, to regard them as ryots by whom rights of occupancy may be acquired.

CHAPTER III.

Section 16—Seems to go too far, for the reasons above stated. A bhag-jotedar is after all only a labourer under another name. This means of cultivating land is simply employed in lieu of wages, being preferable to wages in giving a man an interest in his work; and no one will be more surprised at the sudden change in his condition than the bhag-jotedar, who is quite accustomed to be changed at the pleasure of his landlord. These people really exist, because the zemindar cannot find a ryot, and that because the land will not pay for cultivation on any other way.

Section 17.—The separation spoken of in this section should be valid only if made with the consent of the landlord. The remaining sections of this chapter seem to be unobjectionable, and will guard the ryot against excessive enhancement: all hard-and-fast rules are liable to act harshly in particular instances.

D.—I look on the provisions regarding registration as very necessary, if they are only enforced; but I am afraid if this is left to the ryot they will be ignored. The District Officer should have power to call for, and examine, these registers, to ensure their being properly kept up. The rate in clause (*b*), section 27, is exorbitant, considering the ignorance that prevails regarding the law.

Section 29.—I see no provision for allowing the landlord to refuse compliance if he objects to the order, either on the ground that the nature of the tenure is improperly stated, or, if he objects to the amount of rent, as incorrect.

CHAPTER V.

This chapter, concerning rights of occupancy, requires no apology at the present time. It is now apparently admitted that only ryots of long standing (kadime) are entitled to these rights. The twelve-years' rule is certainly maintained, but the principle involved in section 47 seems to me an almost ludicrous way of making it out. There is to be a perfect transformation scene on a day yet to be fixed. In this draft it is 3rd March 1883. On that date villagers who may be mere tenants-at-will, and may never have held one piece of land for more than three days at a time, will suddenly become ryots with rights of occupancy in the plot last held, *all* contracts to the contrary notwithstanding. This is directly opposed to the law as laid down in section vii of Act VIII of 1869, and renders all contracts under that Act mere waste paper. They would, probably, convert this right into cash at the first opportunity; but I cannot think the circumstances of the case will justify such flagrant infringement of the rights of the zemindar.

Section 49—Appears to be the result of a confusion of ideas—that is, a confounding of khamar land as it is and as it ought to be. It is a contradiction of terms to speak of any one holding khamar land as a ryot, unless a bhag-jotedar is considered such; and I have pointed out that he is not looked on as a ryot, but as another form of labourer. Khamar land ceases to be khamar land once it is let out to a ryot. The tendency is to let out khamar lands, not to retain them, except, perhaps, in indigo factories.

Section 50—Bestows a number of valuable privileges, along with this right, on the ryot: would it be too much to ask that one provision be added on behalf of the man at whose expense, and, perhaps, in spite of whom we are so generous, would it be too much to add, as an incident, that the occupancy right is liable to be revoked for non-payment of the "fair and equitable rent" on the due date? We have taken great trouble to ensure the ryot against exaction. We have gone so far as to interfere with the liberty of contract between him and his master, and it will surely be only just to the zemindar that we insist on punctual payment from the ryot, as we insist on his punctually paying the revenue. If the zemindar is liable to lose his whole estate for non-payment of revenue on a fixed date, there can be no injustice in holding this right and interest conferred on the ryot as liable to sale for the same reasons. If some such provision is not made, I fear it will be considered that the Act is one-sided. It is all for the ryot. I hope no such impression will be allowed to prevail.

Section 51, clause 4.—Any sale of the right in contravention of the law should be held invalid.

Section 56.—This is an innovation on present practice; the right, in this case, is acquired by the landlord and not by the ryot. We may be sure if the ryot comes in he will have to pay for his right what it cost the zemindar; and, under those circumstances, he should be considered as having purchased his title. No legislation is required for this. The effect of the section in other cases will be to cause the zemindar to hold the land as ryot and cultivate by hired labour. It will be a bad day for the country when the landlord makes up his mind to have no more tenants, only labourers; and yet, it looks as if we might come to this.

CHAPTER VI.

Section 59.—I am glad to see the liberty of the subject recognized; but the effect is completely spoilt by clause 2. Even when they agree, which is not often, a Revenue Officer must needs interfere. We legislate for the ryot on the principle that he is a man, but we treat him as if he was a child.

Section 61.—This section is again subversive of all the laws of political economy and everything else. If the land is capable of bearing a higher rent, why should the zemindar be compelled to let it at a lower rent?

As regards clause 2 and the one-fifth limit, I shall have something to say later on.

B—Admitting that rents are no longer to be fixed by consent, the next best thing is a table of rates. It is another question how such a table is to be prepared, and it pre-supposes a certain dead level in the outturn of lands, as if improvement and industry were of no account. It is, however, the only substitute for contract; and though a rough system, will answer, where we can err in favour of the tenant without injuring ourselves. Judging by the rents prevailing in this district, a rate, the maximum of which is fixed at one-fifth of the annual value of the gross produce at harvest time, would lead to a general reduction of rents, except in a few cases of "do" lands, or lands producing more than one rabi crop. Baboo Sitikanto Ghose, Deputy Collector, has, at my request, drawn up a statement showing the effect of such a rate on the various classes of land in this district. It has been very carefully compiled, and is based upon settlement records, road cess papers, and the nirikhbandi of Mr. Keating. The latter has for a long time supplied the place of a table of rates for this district, and so little change has occurred that it might be adopted almost as it stands. It has been followed in all settlement cases, and is regarded by the local zemindars and people as an authoritative document. It is dated 1791, and shows different rates for different tarafs, as contemplated in the Bill.

Section 76.—I can see no reason for an arbitrary limit. The only recognized limit should be what is fair and equitable; and it is not necessary it should bear any relation to previous rent. In some tracts in this district the bigha rate is not prevalent, and blocks of land are held at a merely nominal rate, and neither landlord nor ryot has any idea of the area so held. In these cases it would be most unfair to him, a landlord, not to accept more than double even if offered, *see* section 59, clause 2.

Section 78.—This section will compel zemindars to enhance, once for all, to the highest possible figure. As I said before, if it can be proved that an increased rent can fairly be paid, it should be exacted. A railway through a remote part of the country would treble the value of land and be due neither to zemindar nor ryot, why should the latter reap all the benefit.

CHAPTER VII.

Section 86.—The ryot being liable to ejectment only on breach of conditions under which he holds should not be entitled to any compensation. He will virtually eject himself; and what is of value to the ryot may be of no value to the landlord. He might be allowed to sell, and his successor recognized by the landlord.

CHAPTER VIII.

Section 89.—The ordinary ryot who most requires protection appears to get very little, and yet, to be competent to make an agreement which the landlord will respect. He acquired a certain fixity of tenure, and cannot be called on to pay more than $\frac{5}{8}$ths of the value of the produce (section 119); but he can, apparently, exercise his discretion. The rate for such a ryot has usually been fixed at $\frac{3}{8}$ths, so that, in his case also, we may look for a general reduction of rent, unless he agrees to pay more, which is not likely, once he is in possession, and not liable to ejectment as long as he pays at the rate of $\frac{5}{8}$ths. If not "bound" to pay more than $\frac{5}{8}$ths can be legally compelled to do so on an agreement.

CHAPTER IX.

The provisions of this chapter are very wise, especially as regards receipts; but section 101 is scarcely practicable if we consider that one zamindar may have thousands of ryots

Section 100 clause 4.—I would not feel disposed to put a further permission on forged receipts.

As Government has prescribed a form, it would greatly tend to its being adopted generally, if receipt cheque-books could be bought at a public office, and would further operate as a restraint on fraud.

Sections 112 to 117.—I would make the civil court the arbiter, and not the Collector. The expense of the former would do more than anything else to check these petty disputes.

CHAPTER X.

Section 129.—This section would be harmless, as any class of improvements is concerned; but it will afford a spur to law suits founded on imaginary improvements, and supported with all the wit and ingenuity shewn in such cases by a people prone to litigation.

Section 144.—In case of tenures the Judge should appoint, and the word tenure be excluded from clause (*a*) Further, I consider that the section will be made use of by landowners to get their estates managed by the Court of Wards. Some penalty should be devised to prevent this. I think, on the whole, it would be better if the Judge appointed a manager in all cases.

CHAPTER XI.

Provided the revenue officer's decision is final, I think great benefit will result from this procedure. These officers, however, have not much spare time to devote to intricate disputes, and it will involve an increase of establishment, for which the parties benefited should pay.

CHAPTER XIII.

I am glad to see the law of distraint has not been abolished as was proposed. There is nothing that calls for special remark in this chapter.

The rest of the Bill has reference to the procedure of the civil courts. I have not been able to obtain any opinion from zamindars. They have not read the Bill; and appear to take a languid interest in a measure which so vitally affects their well-being. I think it must be allowed that the position of the zamindar under the Bill will be scarcely better than that of a mere rent charger. Neither he nor his tenants can effect a compromise in future; they must be ranged in hostile camps; and the rules of the contest are rigidly fixed. The need for a law of this severe nature does not seem quite clearly made out. A member of council has stated that 90 per cent. of the ryots in Bengal have occupancy rights. In another place I find it stated, that "it is on all hands admitted to be the fact that, with or without right, the great peasant population of Bengal has for long held the land at very low rates, *far below* the market rack-rent:" these are Sir George Campbell's own words. If the above statements on good authority be correct, then the mere fact of a few riots in Pubna, due, perhaps, to an overzealous officer, are not sufficient excuse for legislation. The condition of Behar has long formed the subject of complaint; but I am inclined to think the land laws are not entirely to blame. Tenancy bills are of little use to a ryot in Bettia sub-division, if he has to trudge all the way to Mozufferpore or Chupra for a hearing; and, therefore, a more paternal system is required, by which the people could be gradually inoculated with certain rights: and once understood and enjoyed, they would be sufficiently tenacious of them to baffle the most grasping zamindar. This is an idea which will be considered out of date; but I equally regard an act which abolishes freedom of contract between landlord and tenant as a backward step in legislation. I have nothing more to add, except that I would not have offered an opinion on the subject, unless I had been called upon to do so. I cannot help observing in conclusion, that the zamindars suffer from a daily increasing difficulty in the collection of their rents and cesses; and I think it behoves us to strengthen their hands to the utmost. Let us, if we will, restrict the demand on the ryot, if we can do so without breach of faith with the zamindar, but afford the latter some sure means of collecting that little Consider the large arrear in Government estates where the manager is armed with an exceptional procedure and the whole power of Government, what must be the difficulties of a private individual, whose only remedy is a civil suit, which is worthless as a resource if his ryots combine against him.

I should have stated that Mr. Sceales, Agent for Messrs. Gisborne and Company, has favoured me with his views, and his letter is forwarded in original.

Dated Bankoorah, the 16th June 1883.

From—J. O'B. SCEALES, Esq, Zamindary's Manager for Messrs. Gisborne and Company, Calcutta,

To—The Magistrate and Collector, Bankoorah.

I HAVE the honour to acknowledge yours of the 9th May, requesting my opinion on the subject of the Bengal Tenancy Bill, No. 5 of 1883.

The act of confiscation (for such it is) bearing the above title honestly looked at, has scarcely a redeeming feature to recommend it; it fails to improve the status of the ryots, that is the cultivator or kurpa ryots, and on the other hand is an act of robbery as far as the landlord is concerned.

The advantages, but none of the liabilities the zamindar now possesses, are to be transferred to the occupancy ryot. He is not to be responsible for revenue. Sunset law will not affect him; he will put in his rent when quite convenient; he will pay his road and Public Works cesses also, when it happens to suit him. As fresh taxes occur the same form will be gone through, *viz.*, the landlord will be made to pay the money into Government, and collect if he can (?) at his leisure; but pay the landlord must, and on a given date and hour. His source of income, the tenant, not only pays when he chooses, but the present Rent Act is such that it discourages punctual payment. Under the present law, from the date of institution of a balance of rent-suits to the date of decree, interest ceases, and after that the decretal money is recoverable at Rs. 6 per cent. interest. Hence, the position of landlord *versus* ryots is this: the former, unable to collect from his tenant, must borrow to pay revenue, paying any interest his mahajun may choose to ask him—usually Rs. 36 per cent. per annum, and frequently much more. The occupancy ryot, who is often a money-lender, loans out the rent to his constituency at, say, Rs. 36 per cent. that by rights should go to his landlord. After a year's litigation the landlord gets his decree for balance of rent without interest, the occupancy ryot getting Rs. 36 per cent. during this period for money not really his: why should he pay? To remedy this, I would suggest that, upon the landlord producing three years' jumma-wasil-bakies and thoka, and in fact making out a *primâ facie* case, the sum sued for be decreed; the ryot may then become plaintiff in his turn for, say, a re-hearing; but should his case fail, *i.e.*, prove frivolous and vexatious, he should be made, not only to pay Rs. 12 per cent. from the date of instituting the suit to the date of decree, but the same interest. Rs. 12 per cent. should run till date of collection, not Rs. 6 per cent. as at present decreed, and to this damages at 25 per cent. should also be enforced. As it is, a clause (44) exists in Act VIII of 1869 to this effect. The lower court has it in its power to decree damages to the plaintiff, supposing the defence to be frivolous; but the weak part of this otherwise sensible condition is, that it is optional; it should be made compulsory upon the court.

If the above suggestions were carried out the Bal of rent-suits would be reduced by three-fourths. The present state of the law encourages ryots not to pay.

What applies to the tenant would apply equally to the landlord: he likewise would be punished for instituting unjust suits, and it is so provided in section 45 of the same Act.

The Government puts itself to a deal of trouble to satisfy itself that zamindars are not landlords in the true sense of the word—that they are in fact mere rent collectors. For the sake of argument admit this I am rent collector for a Calcutta firm: what would describe the conduct of the said firm if, instead of putting every facility in my way and giving me every help in their power, they were to lay themselves out to thwart and discourage my efforts?

This, however, is the policy pursued by Government, they say in effect:—"At sunset on such and such days we want our rents, we are perfectly indifferent as to whether you collect or not—indeed, we put every obstacle in the way of your collecting—but pay or be sold up." I ask if the above is a fair description of the law and procedure as it now stands, and if so, is it just?

Another mode of insurance against a false defence on the part of a ryot, in a Bal of rent-suits, would be to insist upon his depositing at least half the amount he is sued for as Bal of rent; this would, in the first place, secure the zamindar against loss, and invariably lead to a settlement of the landlord's claim, the argument on the part of the ryot being that, as he had to deposit half the amount under any circumstances, it would not be worth his while to set up a vexatious defence.

As to enhancement suits, I concur in thinking they might be handed over to the Collector. A little broadness of view and common sense is sadly required by moonsifs in dealing with them. The idea has got about that the High Court discourage enhancement, however reasonably it is sued for, and the result is that every subordinate officer seizes upon the merest and meanest quibble, in both questions of law and fact, to dismiss the suit.

Independence and common sense in the department are much required.

As to road and public works cesses they press with terrible severity upon the poorer landholders; and the Government should find a means of relieving them of this duty. As to the truth of what I state, let me call your attention to the fact that every estate in this district is in arrears on account of these cesses—witness Samsoonderpore, Phulkeeswa, Ambicanagore, and other pergunnahs—all have been up for sale on the above account, and the money has been with great difficulty deposited by the landholder to save his estate—that he will ever recover his debt from the tenantry is hopeless. These cesses mostly consist of small sums, to be got from hundreds of tenants. None but men of the largest means could plunge so largely into law I have been long puzzled to know why Government have shown such marked dislike to the zemindar: he is supposed to rack-rent and tyranise over the occupancy tenant. It appears to me that this view of the question is an entirely mistaken one.

The curse of Bengal is not the zemindar (I do not know what Government will do without him), but the occupancy ryot, whose responsibilities are nil, and whose emoluments are of the largest. The kurpa ryot is the victim, whose interests Government should look to. Occupancy ryots, taking them all round in this district, pay rent at the rate of from 3 to 10 annas per bigah to the zemindars, but they cruelly rack-rent their undertenants. From Rs. 2-8 for good paddy land to Rs. 8 and Rs. 10 per bigah for sugarcane land is charged on the cultivating ryots, and these are common rates all over the district. In the face of this the zemindar is told that he tyranises and rack-rents; if so, what term is to be applied to the occupancy ryot, acting as I have described—the occupancy ryot is the annuitant, not the landlord.

The political feature of the question, or its legality, with reference to the permanent settlement, I do not attempt to discuss. Various associations are at work all over the country, and they will doubtless make themselves heard in good time. But as to necessity for such a Bill, as the one proposed, I have a word to say. Could it be proved that the proposed alteration in the law of landlord and tenant was to be of sufficient benefit to anyone as to warrant such a stupendously important step as the Government propose to take, one might welcome the alteration; but as a matter of fact, the evil greatly counterbalances the good. Government will lose, because it chooses to dispossess its rent-collectors (zemindars) of the little power they at present have to collect the Government revenue. The zemindars lose in having their property and rights made over to the occupancy ryots. The kurpa ryots will be dissatisfied, because the stronger the position of the occupancy ryots, the more the kurpa ryot will be rack-rented. Even the occupancy ryot will suffer; the more easy it becomes to transfer holdings, the more easily they will be to alienate, so that, as a matter of fact, no one gains. I confess I look upon the present proposals to alter the law as a mistake. Act X of 1859 and Act VIII of 1869 were doing the work well, and matters settling themselves fast. The present proposal, if carried out, will lead to a renewal of litigation of the same costly and cumbrous nature that went on for 15 years after the passing of Act X of 1859.

Affairs between landlord and tenant have of late been remarkably amicable, and the law on the subject, known as Judge-made law, was sufficient, and fairly sensible. Statistics declare that thousands, not to say millions, of mourasi pottas were being given out yearly, and as each mourasi holding means a complete cessation of hostility between landlord and tenant, indeed, implies the most amiable relations, why disturb such a state of affairs.

To quote the Pubna disturbances as necessitating a change in the law is childish. The same agitation took place ten years ago, and might easily have been stopped by a strong executive.

Pre-emption means that the landlord having already purchased the zemindari at 20 year's

purchase, will have the right of again purchasing a portion for another 20 years' purchase—a valuable boon—having paid twice for what was probably not worth the fresh payment. He must either cultivate it himself (figure to yourself Hatua, Durbhunga or Burdwan cultivating a jumma), or give an occupancy right at an equitable rent to a tenant to cultivate: freedom of contract is non-existent under the new law. Maximum enhancement should not be limited to Rs. 25 per cent., but should be left to the discretion of the courts.

Reams might be written on the above subject, but I, for one, have not the time. Briefly, I think, the proposed alteration unnecessary, and likely to cause the most serious disturbance of the present amiable relations existing between landlord and tenant.

The facility for the recovery of rent by the zemindar is required; and this might be carried out somewhat in the way I have suggested. As the remainder of the Act appears to be no improvement on Act VIII of 1869, I can see no occasion for any change.

The Government insisting on zemindars collecting road and public works cesses, they are bound in common fairness to afford them facilities for doing so.

No. 467, dated Howrah, the 23rd July 1883.

From—E V. WESTMACOTT, Esq., Collector of Dacca, Officiating Deputy Collector of Howrah,

To—The Commissioner of the Burdwan Division.

From the Board of Revenue, No. 342A of 13th June 1883.
From the Secretary to the Government of Bengal, Revenue Department, No. 322T.—R., undated.

With reference to your circular No. 38 of the 14th ultimo, with enclosures as per margin, calling for a report on the Bengal Tenancy Bill, I have the honour to submit that my views have already been laid before the Government of India at some length as regards the proposed legislation, and that the principles of the Bill being assumed, I have not much to say regarding its details.

2. My personal experience as a revenue officer has been gained principally in the Rajshahye, Dacca, and Chittagong Divisions. I know scarcely anything of the Burdwan or Presidency Divisions, and what I have learnt respecting the tenancy question in Behar, has been from information at second-hand, supplemented by such enquiries as I have been able to make while on tour in several of the Behar districts.

3. In the part of the country which I know well, if any legislative interference is required, it is rather on behalf of the landlord—I use the term loosely for the receiver of rent—than on behalf of the tenant. In Behar I understand that whatever the historical position of the tenant may have been with reference to his rights in the soil, the landlord has practically a monopoly in the land, and competition among the tenants has rendered him master of the situation. Very few ryots appear to have been able to maintain a right of occupancy. This appears to be due entirely to the pressure of population on the land which is less fertile than Bengal, and to the habits of the people, which led them to look to agriculture alone for a livelihood. The ryots feel that it is absolutely necessary that they should obtain land, and they close their eyes to the possibility or impossibility of fulfilling the terms to which they agree in order to obtain it, and, at the same time, of being able to maintain themselves and their families. The result of this is unreasoning competition for land, and hopeless poverty for the cultivator. Even when the Behar ryot is in possession of land, I find that the landlord is able to dictate to him what crops he shall grow, and that indigo, for instance, cannot be grown without consent of the landlord. In the eastern districts such interference is impossible. The cultivation of jute has greatly extended of late years, as being a more profitable crop than rice, but the landlords in vain endeavour to secure a share in the increased profits of the ryot. It appears a monstrous thing that a tenant having taking land on certain terms should not be able to cultivate that land as he thinks most to his own advantage. The English question of exhausting the soil, and leaving it impoverished at the end of the tenancy, does not arise in India, and the landlord's interference arises only from a wish to share in the ryot's increased profits besides receiving the stipulated rent. The weakness, however, of the Behar ryot appears to arise from the fact that there is less land than the cultivators require, even as in Eastern Bengal the ryot is strong, because there is more land than the ryots can cultivate, so that the landlord who endeavours to extort from his ryots more than they are willing to pay finds his land uncultivated altogether. It is not only the number of persons per square mile that must be considered, but the inferior fertility of most of the land in Behar, as compared with that in Bengal. I should say that population would press less heavily on the soil in Rungpore with 600 persons to the square mile than in Behar with only 400.

4. It must then be considered whether the natural law which impoverishes an agricultural population when too numerous for the land, can be counteracted by legislation, and whether the same legislation will not produce more evil than good if applied to tracts in which fertile waste land is carrying out for cultivators.

5. It may be possible to place restrictions on the power of the present landlords of Behar, and there may be historical grounds for believing that the ryots once enjoyed such rights in the land as would justify such restriction, but it would have been impossible for the landlord to improve his own position and to destroy the rights of the ryot had he not been aided by the action of a natural law, the law that an increasing population on a limited culturable area must impoverish an exclusively agricultural people. It is possible to restrict the power of the present landlord, and to strengthen the position of the present tenant, but during the continuance of the action of the natural law, to which I have referred, it will be impossible to improve the position of the rent-paying cultivator at the expense of the rent-receiver. In

curtailing the powers of the present rent-receiving landlord, you can only transfer them to another person, namely, to the rent-paying ryot, but the consequence will be that the said ryot will become a rent-receiver, and will sublet his land to cultivators who will be poorer than the present cultivators, because their competition for land will be absolutely unchecked by any traditional respect for rights of the ryots in the soil. The profits of the present landlords will be curtailed, the rent-paying ryots of the present will become rent-receiving middlemen, and the land will be cultivated by a class absolutely unprotected by any feeling that the cultivator has rights in the soil, and at the mercy of rent-receivers whose attention is confined to a limited area, and who are, therefore, able by closer supervision to screw more out of their tenants than the landlord of extensive estates. I quite admit that it is possible, and perhaps just, to make the present Behar ryot into a wealthy and thriving man at the expense of the zemindar, but those who think that such a step will make the actual cultivator one whit less wretched than he is now, will find themselves grievously disappointed. So long as there are too many people for the land, to support, and so long as the only means of supporting those people is derived from the land so long will rents be forced up by competition, and the cultivator be a pauper. The action of the proposed law will only be to make the occupancy ryot the rack-renter instead of the present landlord, and the actual cultivators will be none the better for it.

6. I may illustrate the change in the position of the occupancy ryot by a passage in a report on rents which I received from one of my Deputy Collectors a few days ago. He said that a certain rate of rent was so high that it was impossible for the ryot to make a profit except by cultivating the land himself. The Deputy Collector evidently considered that for a ryot to be obliged to cultivate his land himself was a hardship, and that he had a right to a position in which he could sublet the land, or hire ploughs and labourers to cultivate it for him. The present pauper ryot of Behar may be raised to such a position as this by curtailing the powers of the zemindar, but there will still remain the mass of struggling cultivators, ready to promise any rent, as long as they can secure a crop from the land, and the rights of occupancy being vested in those to whom they promise their rent, they will be themselves absolutely unprotected. I believe that the proposed law will personally benefit the present generation of ryots, but I do not think it can contribute anything to the solution of the problem which meets the statesman in Behar.

7. To resort to the emasculating interference of legislation on behalf of the weaker in free bargain between man and man has been tried over and over again in the history of the world, and has as often failed in its object. The weak cannot be made strong by law because the strong will find means of evading the law. The evil, however, is not without a remedy, and that remedy is already in course of application. I may say that there are two such remedies. One of them is the diversion of the surplus labour of Behar from agriculture to other spheres, and the other is emigration. I find men working in Howrah in mills and factories, as carters, grooms, or labourers, and easily earning six or seven rupees a month, while employers tell me that they want more hands. I question these men, and find they come from Behar districts, in which the Magistrates have told me that three rupees per month is far more than it is necessary to pay as wages to the village watchman. Few of the emigrants as yet bring their families with them, and most of them return to their homes after a few months' work, but the number of permanent settlers is increasing, and the demand for labour is such that it must continue to increase. I have seen how the position of the English farm-labourer has improved in consequence of emigration, till a farmer in Sussex has told me that he has difficulty in hiring a carter for a guinea a week and a free house, and I feel confident that emigration will gradually raise the position of the Behar ryot.

8. I observe that most of the Behar labourers attracted by British capital to Howrah and Calcutta come from the districts south of the Ganges, served by the East Indian Railway. There is a striking absence of men from the districts north of the great river. From this I argue that the statesman who desires to raise the position of the masses in Behar should push on railway communication between those districts and the great manufacturing centres, and with the districts, such as Dinagepore and Dacca, in which thousands of acres of fertile land are lying waste for want of hands to cultivate them. I believe that emigration would be stimulated by a continuous line from Chumparun through Purneah and Dinagepore to the Northern Bengal Railway, and parts of such a line are already made or in course of construction.

9. I have purposely abstained from all comment on the proposed regulation of relations between landlords and tenants in Behar, with reference to supposed rights of the latter, because I do not consider that my experience qualifies me to speak on the subject. I can only say that I do not believe the proposed law will have any effect whatever in raising the condition of the masses.

10. Turning to the parts of Bengal with which I am well acquainted, I find that the proposed law is all in favour of the ryot, who is already so strong as to be able to withhold from the zamindar that to which he is justly entitled. In Behar, if a zamindar deprives a ryot of his land, I persume the ryot must starve. In Bengal it would be the zamindar that would starve, and the ryot would migrate gaily to another estate, of which the proprietor would welcome an additional tenant, and an increase in his rent-roll. I use the term Bengal with reference to the divisions of Rajshahye, Dacca and Chittagong, in each of which I have gained some experience. Not only is the zamindar unable to enhance the rent beyond what a reasonable ryot thinks it just that he should pay, but in many instances dishonest ryots maintain their position on the land without paying any rent whatever, and the result is litigation and violence.

11. I believe that it is less the pecuniary necessities of the zamindars that have led them to create tenures intermediate between themselves and their ryots, than the difficulty of realising rents without more detailed supervision than the proprietor of extensive estates can exercise. In order to secure an income without direct collection from the ryots, the Maharajá of Burdwan has granted *putnees* to middlemen, and they again, I believe, have created tenures over lesser areas subordinate to their own. The Paikpara zamindars in Noakholly have promoted all their ryots to be petty talookdars, so that the rents may be collected by sale procedure in the court of the Collector. The Maharani of Dinagepore grants villages in farm for five years to one or more of the principal residents in them, while individual ryots often hold lands for which they pay more than a hundred rupees as rent. The foundation of the strength of the ryots' position is the quantity of land available for cultivation beyond what the existing population can cultivate, and the zamindars are too short-sighted to offer sufficiently liberal terms to encourage that immigration which would increase the competition for land. To speak of the wretchedness of Bengal ryots as notorious, argues absolute ignorance of the facts of the case, and can only excite ridicule in those who know anything of the ryots of Dinagepore, Backergunge or Noakholly, to say nothing of other Bengal districts.

12. I have no wish to represent the Bengal zamindar as an injured innocent who wants no more than his just due; on the contrary, I know that he is ready enough to grasp at all he can get; and the only reason that he has not reduced his tenantry to the condition of the Behar ryots is that the natural law of the pressure of population on the land has been too strong for him. At the same time, I think, he now in most instances gets somewhat less than his due, and if legislative interference is warranted, and likely to prove efficient, it should be in the direction rather of helping the zamindar to obtain his due than of further strengthening the position of the ryot.

13. I think the ryot generally recognises that there are at least two just grounds for enhancing his rent, one being the discovery by measurement of more land in his possession than he has been paying rent for, and the other a permanent increase in the money-value of the produce of the land. I do not mean to say that a ryot will not resist enhancement on these grounds as well as on any other, but if defeated, he will look on it as the fortune of war and not as an injustice. As regards the first ground of enhancement there is no doubt whatever, and many Dinagepore ryots are paying a cess, or *mangon*, in consideration of the landlord's foregoing the right of measurement, rather than submit to any enhancement of the substantive rent, which nominally remains unchanged. The second ground of enhancement, permanent increase in the money-value of produce, would be disputed more often than the former, but I have many a time known ryots year after year pay a *mangon* which varied with the goodness or badness of the crop, in addition to their rent, and I have heard of many cases in which ryots contumaciously withhold payment of rent, and yet pay their *mangon* cheerfully. If a ryot has been paying a rupee a *beegha* for fifty years, and knows that fifty years ago his grandfather in the best of times could get no more than eight annas a maund for paddy, he feels that now, when he can always get a rupee, the zamindar may justly ask for a *mangon* every year in addition to the rent. The rent, however, must not be enhanced—once alter the substantive rent, and the ryot feels that he will be safe no longer. I have no doubt that the ryot's feeling as to the justice of enhancement with reference to the value of produce, is a traditional survival from the days when all rents were paid in kind. It is a grave error to look on all *mangons* as illegal cesses. They are virtually enhancements of the rent, to which the ryot has agreed, because he feels that the zamindar is justly entitled to them, and it is a mistake and a robbery of the zamindar for the legislature to disallow them.

14. The question of enhancement on the ground of increase in the money-value of produce was a tolerably easy one so long as rice continued to be the principal staple. Sugar-cane does not appear to have disturbed it, but now the enormous extension of the cultivation of jute has introduced serious complications. Tracts which once grew rice enough for export, in addition to what sufficed to feed its population, have now so large an acreage under jute as actually to be importing rice from elsewhere. The zamindars see how the jute trade enriches the ryots, and desire to share in the profits, while the ryots deny the zamindar any right to enhance, except upon a rise in the value of rice, which was the old staple. In the proposed law I find no attempt to do justice between landlord and tenant in this matter.

15. One great difficulty in dealing with the agricultural question is the co-parcenary system. The proposed law takes some cognizance of this evil as it applies to the landlord, but none whatever as it applies to the tenant. I have known instances in which a petty ryoti holding belongs to over thirty co-sharers, many of them widows, many married to husbands who are not co-sharers. I believe I could find instances where the co-sharers were twice as many. Such a tenantry as this is very difficult to deal with, no co-sharer considering himself responsible for more than his own share of the rent, and the tenants suffer from it as much as the landlords. The laws of inheritance, both Hindoo and Mahomedan, have by many intelligent natives been admitted to me to be the curse of the country, and their effect on the question of tenancy is well worth a statesman's attention.

16. I will now proceed to comment in detail on some of the features of the proposed law.

CHAPTER II

17.

has little, if any, practical application in Bengal.

18. *Sections 14 to 16.*—This is not new, but in the case of ryots I have always thought it unjust as regards money-rents, and whereas the decennial settlement alienated all right of

Government to share in increased money-value of produce, I have always considered that it compared most unfavourably with the commutation of tithes in England, a system under which the rent-charges vary from year to year on a sliding scale regulated by the average price of corn for seven years. I think it unjust to zamindars, and inconsistent with the feelings of the people, that money-rents should be fixed without reference to changes in the value of produce. The rent was originally a proportion of the produce, and this should in my opinion be borne in mind.

19. Government deliberately gave up all right to share in the proceeds of any increase in the money-value of the ryots' crop, and in so doing gave up revenue to which the State was entitled. It is not now the question whether the equivalent secured by fixing the revenue in perpetuity was sufficient compensation for the future loss to the revenue, but it does not appear that this action with reference to the revenue justifies the State in compelling the zamindar to make similar sacrifice. Rents in India are based on a division of the crop, and it is opposed both to equity and to the traditions of the people to allow the cultivator to monopolise all benefit from increase in the money-value of his crop. If a ryot pays a certain rent when he only gets eight annas per maund for his rice, he should pay so much more when he gets double that price.

20. *Section 21*.—A number of tenures are created at the same time, on the same rates of rent, covering a considerable area. The time comes when enhancement is legitimate, and a landlord in the centre of the said area proceeds to enhance. He cannot enhance beyond the customary rate, and he finds that every tenure, for miles round, is paying at the same rate, so that he is precluded from enhancing. If no landlord can enhance until the majority of his neighbours have enhanced, it is clear that enhancement can never be commenced and therefore the right of enhancement becomes a dead letter.

21. *Sub-section (4)*.—The reference is to *jungle-booree* tenures. A tenant taking land on a *jungle-booree* lease looks to recouping his expenditure on reclamation during the period of his lease, and to allow him to continue to hold on exceptionally favourable terms after the expiry of the lease is inequitable and contrary to all the customs of the people, so far as I know them.

22. *Section 22*.—Where a tenure has been granted rent-free for a term, what is to be the limit of the rent at the expiry of that term? The double of nothing is nothing.

23. *Sections 23 and 24*.—I think very fair.

24. *Section 27*.—It would be to the advantage of both landlord and tenant that all transfers should be registered; but as each party wishes to defraud the other, if possible, both endeavour to avoid registration or any definition of the terms of tenures. The interchange of *pottas* and *kabooliyats* prescribed by law has always been steadily evaded by whichever party was strong enough to avoid it. Registration can only be secured by the courts rigidly refusing to take legal cognizance of any right which has not been registered, and it is not safe to leave it to the dishonest amla of the zemindar's cutcherry, who will always burn their books when advisable. Just as notice of relinquishment is given to the Collector, so must notice of transfers be given to the same officer, who will give notice to the landlord, and no ryot or co-sharer in a ryoti tenure should be recognised as possessing any rights unless his succession to the holding has been registered. The fee on registration, to which I consider the landlord entitled, can be paid by stamp to the Collector at the time of application. The proposed law appears to contemplate registration as being solely for the benefit and protection of the tenant. Having had extensive dealings with tenantry in estates belonging to the State or to Court of Wards, I can certify that registration of transfers would be a great boon to a landlord. For years rents are paid in the names of dead tenants, until a day comes when rents are withheld, and then it is a matter of difficulty to find out who is in possession of the holding. There may be a score or two of co-sharers, male and female. This is only one exemplification of the principle on which the proposed law appears to proceed, namely, that it is the tenant alone who requires protection, and that the landlord is only a tyrant, whom it is necessary to control. If registration is carried out by the State, and not left to the landlord, I would apply it to all ryots as well as to tenure-holders.

25. *Section 37*.—I have been informed that there are *putni* tenures which are not permanent, and I think this provision of the law uncalled for.

26. *Section 45*.—I believe this provision is necessary to protect ryots in Behar; it is not required in Bengal. The right should be confined to cases in which lands have been held in one village or *mouza*. To bring an 'estate' into the question is quite a new idea, not warranted by any custom of the country.

27. *Section 50 (a)*.—This provision appears to open the door to endless litigation to determine what renders land unfit for the purposes of a tenancy. I do not consider rural moonsifs by any means likely to decide justly in such a matter from what I have known of their modes of thought.

28. Free transfer may not always have been an essential feature in a ryot's occupancy right, but, so far as my experience goes, it has become recognised as customary and ought to be legalised. Giving notice to the landlord, and giving the landlord a right of pre-emption, is not the custom, and I do not think it necessary. There are many practical difficulties in the way. For instance, shares in ryoti holdings are often transferred, and transfers sometimes give a right of re-entry on repayment of a loan.

29. *Section 51*.—It appears to be supposed that the owner of an occupancy right is always a tangible individual. I have already pointed out that such a right is frequently subdivided among a number of male and female co-parceners, and these co-sharers sometimes dis-

pose separately of their shares. There are peculiar difficulties with reference to the women in Mahomedan families who inherit fractional shares and marry out of the family. Of these I think a rent law should take cognizance.

30. *Section 53*.—What would be the landlord's right when a ryot raises money on mortgage, giving the mortgagee possession for a term with right of re-entry? This is not infrequent.

31. *Section 58*.—The presumption is a false one. If a ryot has held for a considerable number of years at a fixed rent, and the average money value of produce has permanently risen in the interval, the presumption is that the rent has ceased to be fair or equitable, and that it is just that it should be enhanced.

32. *Section 59(2)*.—In Dinagepore, where there are large areas of waste land, a ryot frequently holds twice or three times as much land as he nominally pays rent for, and no one would attempt to prove that he was not liable to pay rent for the whole if it were measured. Why should the law step in and say that he was only to pay rent for 8ths in addition to what he nominally holds? Section 60 does not meet the case. If, as is probably the case, the landlord cannot prove when the excess land was added to the holding, and when the area of the holding was originally understated by a dishonest *ameen*, I am quite sure that a Moonsiff would hold that no addition had been proved. Whatever may be stipulated as to rates of rent, the landlord ought to be allowed to recover rent for every foot of land which a ryot holds.

33. *Section 64*.—The rates of rent ordinarily paid are no clue to what rents ought to be if they were fixed at a time when produce was cheaper on the average than it is at the time of inquiry, and I think the provisions of this section very just. They will, however, be easily evaded by raising questions as to the classification of specific plots of land.

34. *Section 75(c)*.—Instead of saying that the landlord and ryot shall each have one-half of the benefit, I think that the increased rent should bear the same proportion to the old rent that the increased prices or the increased produce do to the old.

35. *Section 79*.—Why should a ryot be allowed to apply for reduction year after year, when a landlord cannot apply for enhancement, even on proved increase of area, oftener than once in ten years?

36. *Section 83*.—These lists to be of any use must be far more carefully prepared than at present. In one district I found that because the returns for one or two outlying thannas never came in, in time to be entered in the fortnightly return, there had not for years been any entry made in the returns of the prices in those thannas. I had important settlements in hand in those thannas, and was very desirous to observe the fluctuations in prices, but found nothing on record. The original police reports had been destroyed, and the returns were blank.

CHAPTER VIII.

37. I would prefer looking on the occupancy ryot as the ordinary ryot.

38. *Section 91*.—Any law fixing the rent of a ryot without a right of occupancy will always be a dead-letter.

39. *Section 92 (2)*.—Ten weeks is a short time I think to allow a Moonsiff to dispose of a contested case, and, as a general rule, a landlord must let his land in April at latest, or he will not let it at all for that year. The question should be settled absolutely before the end of *Choitro*.

40. *Section 93 (b)*.—I think this compensation to a ryot, who has no rights of occupancy, is iniquitous. I cannot understand on what grounds it can be considered just. If a ryot does not agree to pay the enhanced rent, and does not give up his holding, he is considered liable to pay the enhanced rent for the next year. I do not see why the law should change this. The ryot has no right of occupancy, and I do not see why he should be allowed to hold on if he does not mean to pay the rent. The present arrangement seems a very just one, and I think the landlord has reason to complain if section 93 becomes law. If a ryot has no right of occupancy, I think the landlord has as much right to enhance his rent after due notice given, as the owner of house property in Calcutta. You will never be able to distinguish practically between ryots and under-ryots, or tenures and subletting ryoti holdings.

41. *Section 96 (a)*.—The language of this clause scarcely applies to the very common cases in which a ryot holds originally more land than the nominal acreage of his holding, by the dishonesty of the zemindars' servants, or for the cases in which there is no proof that the holding was ever originally measured, but in which the ryot has imperceptibly added pieces from the waste, or from abandoned holdings. The landlord's right to measure and to assess all land at full rates is always admitted, but it might be difficult to prove that land held in excess of the nominal area of a holding was an addition to the holding. The landlord might be called on to show when and how it was added. I therefore think that the wording of this clause might be improved.

42. *Section 100*.—The name of the person making a payment should be added in every receipt.

43. *Section 101*.—How would this provision apply to the case to which I have already drawn attention, in which a ryoti holding belongs to a number of co-parceners? Who is entitled to the receipt?

44. *Section 114*.—It appears objectionable that litigious persons should be allowed to re-open a question in court when disposed of by the Collector's commissioner with assessors. I think it would be enough that the Collector should have powers of revision.

45. *Section 119*.—I think it objectionable to pass a law which will in practice be evaded, as will certainly be the case with the limitation of the rent to $\frac{5}{6}$ths of the gross average produce. In Nakholly there is a quantity of land which remains uncultivated for years together, and is only taken up when the price of rice is exceptionally high. The men who then take it up are called *jotedars*,—not to be confounded with the substantial ryots called *jotedars* in Dinagepore and Rungpore—and I think it impossible to interfere with the free contracts which they make. I have never had any trouble in the settlement of any questions arising from such free contract, and the rents are often very high indeed. There is no average annual produce in lands only occasionally cultivated, and I think that any attempt at legislative interference with free contract in these cases will hinder cultivation, if not practically evaded.

46. *Section 123*.—I think there would be very grave injustice to zemindars in such a provision as this. It is possible that in Behar it may be required, but in Bengal it would deprive the zemindar of what is really rent to which he is fairly entitled, and which the ryots have agreed to pay, because they recognised the justice of the demand. The ryots have always opposed any alteration of their nominal rent, even when admitting the zemindar's right to receive more. In Dinagepore it is extremely common for the ryots, fully aware that they hold much more land than they nominally pay rent for, to agree to pay the zamindar regular cess of so much on every rupee of the nominal rent on condition of his foregoing his right of measurement. This is a compromise made with the full consent of both parties. It prevents litigation and possible rioting, and is in accordance with the feelings of the people. If the law declares that the zemindar shall not receive such a cess as this, he will be driven to actual measurement, very much to the dissatisfaction of both parties, cultivation will be interrupted, and it is very probable that agrarian riots would ensue. In other cases, independently of the question of measurement, the ryot pays a similar cess in consideration of the increased money value of the produce of his holding, rather than allow his nominal rent to be enhanced. With such a compromise as this, again, it appears to me neither politic nor equitable to interfere. On the other hand, there are fees levied by zamindars as market dues, mooring dues, taxes on sales of cattle, and the like, often levied, as at the sudder station of Dinagepore, at markets for which year by year the zemindar draws money from Government as compensation for the abolition of *sayer* duties. With such cesses as these I would most certainly interfere, and advocated interference eleven or twelve years ago.

47. Between these two classes of cess, one which I consider absolutely mischievous, and the other which I consider quite unobjectionable, there is a third class respecting which I think very full enquiry should be made. I refer to contributions made by the ryots on the occasion of the zamindar's marriage, or when it becomes necessary to reinforce his fleet of elephants. The question to be decided is how far such contributions are voluntary and how far compulsory. In Dinagepore they are certainly voluntary. If a zamindar asks his ryots for more than they think just, he will not get it, and if he makes any attempt at compulsion they will either leave his land or perhaps even resist him forcibly. There is some remainder of feudal feeling among the ryots, and they would consider it derogatory to their own self-respect to refuse a reasonable contribution on a special occasion. With such a state of affairs I should object to interfere. There is no evil requiring redress. Then there is the universal tax of *tohreer* paid by ryots as a percentage on their rents to the cutcherry *amla* and *piyadas*, whose pay received from the zamindar is nominal. The ryots do not complain of paying this, and when I enquire about it, even in wards' estates, they try to conceal the fact of payment. Officers without revenue experience will ridicule my statement, but it is a fact that the ryots like making these irregular payments, and even when in an attitude of combined resistance to all demand of rent, fighting their zamindar both in the law court and in the field, they continue cheerfully to pay the cesses which it is proposed to declare illegal. Whatever they may think it just to pay they will pay, so long as it is not legally recoverable, but if the zamindar relies on the courts for the realization of his dues they tell him to go to the courts, and make the most he can out of it. The natives cling to custom, and abhor legal definition of rights, and therefore legislative interference disturbs the peaceful relations between landlord and tenant.

48. It must be remembered, however, that I speak of ryots who have a strong position, from which they can successfully defy any attempt at injustice on the part of the zamindar. If the ryot of Benar is so utterly powerless as I am led to suppose, I admit that legislation may be necessary to protect him. If the zamindar has power enough to compel the ryot to pay illegal cesses against his will, I do not object to the interference of the State, but where both landlord and tenant are content with the indefinite relations between them, understood and freely accepted by both parties, but indefinite when brought before the tribunal of the moonsiff, I think that very serious economic evils are likely to ensue from any attempt at legal definition, or limitation, however attractive to a theoretic and sentimental statesman. The result of such an attempt will be to set class against class, where relations are now friendly, as following the cherished customs of the country and the natural economic laws. The proposed provision may be beneficial for Behar, but in Bengal would be positively mischievous.

49. *Section 126* (2) *f*.—In waste land, it is very just that the reclaiming ryot should be allowed to erect a dwelling-house, but in settled estates I doubt the justice of it. Where the ryots holding, generation after generation, becomes the property of an ever-increasing number

of co-sharers, the extension of homestead land may very seriously curtail the arable area, and consequently the power of the holder to pay its rent. The landlord will not be allowed to assess the newly converted homestead lands at the increased rent, which homestead lands generally pay, and it has further been proposed that a ryot ejected from his holding cannot be ejected from his dwelling house. If the holding adjoins an increasing bazar, I think this provision would enable the ryot to obtain an unfair advantage.

50. *Section 133.*—I fully approve of the concluding proviso in this section, but am unable to see why the holder of *lakhiraj* or revenue-free land should be deprived of his right to measure. There appears to be some omission in this chapter. I presume it is intended to allow the landlord to assess rent on all land found in a holding, but I do not see that this is stated. Measurement would be of very little use without it

51. *Section 139.*—Application to the court or the Collector should be allowed in any case. The ryot generally lies when he says he has tendered to the landlord, and if he really has done so, the zamindar's amla will always deny it. It is objectionable to retain a provision which is practically null and void.

52. *Section 112.*—It should be clearly stated what constitutes actual possession of an interest. I have known it ruled that a co-sharer who had obtained a decree for possession of a share, but who had never succeeded in getting any share in the rents, was not in actual possession.

CHAPTER XIII.

53. The only cases in which I have known distraint much employed in Bengal has been where ryots from the main land, cultivating land in the islands, sell the crop on the spot to merchants who come with their boats, and return to their homes, perhaps never cultivating the same land again. The ryot cannot pay the rent until the moment of sale, and will not pay if once the crop is removed, and therefore it seems just that the zamindars should be allowed to prevent removal, and unfair on both parties that he cannot do so without the expense of litigation. As regards settled ryots I have no objection to the proposed restrictions on distraint.

54 *Section 208 (c).*—Gives the tenant power very seriously to injure the tenure while reserving to himself all real profits by *benamee* alienations. Much litigation might also rise from the disposal of the dead, or planting a *toolsee* plant.

55. I have not observed any points beyond what I have noted, which appear me to call for adverse comment, and I have made no remark upon provisions which appear unobjectionable or beneficial. I think the proposed Act generally will do more harm than good in the Bengal districts with which I am well acquainted.

Description of Land	Description of staple crops grown on the land.	Average amount of produce per beegha.	Price at harvest time	Present average rate of rent per beegha as far as known	One-fifth of the average value of the produce.	Remarks
			Rs A P	Rs A P	Rs A P	
Bali jole (low-lying rice land), 1st class.	Haimanti rice	3 máps or 11 maunds	8 12 0	2 12 0	1 12 0	The existing rates of rent vary from Rs 2 to Rs. 3
Ditto ditto, 2nd class .	Ditto .	3 máps or 12 maunds	7 8 0	2 4 0	1 8 0	The existing rates of rent vary from Re. 1-8 to Rs 2-8.
Ditto ditto, 3rd class .	Ditto .	2 máps or 8 maunds	5 0 0	1 12 0	1 0 0	The existing rates of rent vary from Re 1-4 to Rs 2
Bali kanah (strip of low-lying land between two high lands), 1st class	Ditto	3 máps or 12 maunds	7 8 0	2 4 0	1 8 0	The existing rates of rent vary from Re. 1 9 to Rs 2-12.
Ditto ditto, 2nd class .	Ditto	2 máps or 8 maunds.	5 0 0	2 0 0	1 0 0	The existing rates of rent vary from Re 1-3 to Rs. 2-5
Ditto ditto, 3rd class	Ditto .	1½ máps or 6 maunds	3 12 0	1 10 0	0 12 0	The existing rates of rent vary from Re 1-4 to Re 1-14
Bali mat ani (flat rice land next in quality to the kana'i lands), 1st class.	Ditto	2 máps or 8 maunds	5 0 0	1 13 0	1 0 0	The existing rates of rent vary from Re. 1-7 to Rs. 2-5
Ditto ditto, 2nd class .	Ditto	1 máp 6 salis or 7 maunds	4 6 0	1 8 0	0 14 0	The existing rates of rent vary from Re. 1-1 to Rs. 2
Ditto ditto, 3rd class .	Ditto .	1½ máps or 6 maunds	3 12 0	1 4 0	0 12 0	The existing rates of rent vary from annas 12 to Re 1-12
Bali danga or high land on which only rice is grown, 1st class	Ditto	1½ máps or 6 maunds	3 12 0	1 2 0	0 12 0	The existing rates of rent vary from annas 14 to Re 1 4
Ditto ditto, 2nd class	Ditto	1 map or 4 maunds	2 8 0	0 14 0	0 8 0	The existing rates of rent vary from annas 10 to Re 1-2
Ditto ditto, 3rd class .	Ditto	4 salis or 2 maunds	1 4 0	0 9 0	0 4 0	The existing rates of rent vary from annas 8 to annas 12
Ausha danga or high land on which only aush or early rice is grown	Aush or early rice	6 salis or 3 maunds	1 14 0	0 10 0	0 6 0	The existing rates of rent vary from annas 6 to Re 1-1.
Do karpa or high land on which karpas (cotton) is especially grown, 1st class	*Karpas* (cotton)	1½ maunds	14 0 0	7 2 0	11 0 0	These are exceptionally good lands, and are to be found in *tarafs* Balsi, thana Indus, and in village Jeliberia, and in the neighbourhood thana Ouda, and in certain parts of thana Beheropore, such as Hatia, &c.
	Til (oilseed)	½ ,,	7 0 0			
	Jab (barley)	2½ ,,	5 0 0			
	Gum (wheat)	2½ ,,	7 8 0			
	Boot (gram)	2 ,,	5 0 0			
	Masoor (a kind of pulse)	1½ ,,	4 8 0			
	Sharisa (oilseed)	½ ,,	12 0 0			
	Total		55 0 0			The existing rates vary from Rs. 4-12 to Rs. 9

Description of Land	Description of staple crops grown on the land	Average amount of produce per bigha	Price at harvest time	Present average rate of rent per bigha as far as known	One fifth of the average value of the produce	Remarks
			Rs A P	Rs A P	Rs A P	
Ditto ditto 2nd class	Ditto	A little less than above	45 0 0	6 2 0	9 0 0	The existing rates vary from Rs 1 8 Rs 7 12
Ditto ditto 3rd class	Ditto	Less than the produce of the 2nd class	35 0 0	5 6 0	7 0 0	The existing rates vary from Rs 1 10 to Rs 7 12
Dhikhu or do land on which sugarcane is especially grown 1st class	Sugarcane Til	13 maunds 2½	39 0 0 5 0 0	6 10 0	8 11 0	The re[illegible] also [illegible] after sugarcane is cut. The existing rates vary from Rs 1½ to Rs 8 7
		Total	44 0 0			
Ditto ditto, 2nd class	Sugarcane Til	12 maunds 2 "	36 0 0 4 0 0	5 6 0	8 0 0	The existing rates vary from Rs 3 6 to Rs 5 11
		Total	40 0 0			
Ditto ditto, 3rd class	Sugarcane Til	10 maunds 1 maund	[illegible] 0 2 0 0	4 8 0	5 6 0	The existing rates vary from Rs 2-14 to Rs 6-8
		Total	32 0 0			
Nij suna or suna proper, 1st class	Sugarcane Til	6 maunds 1 maund	18 0 0 2 0 0	4 1 0	4 0 0	The existing rates vary from Rs 1 7 to Rs 6 15
		Total	20 0 0			
	Karpas *Sharisa* *Jab* *Bot* *Musor* *Gum*	1½ maunds 1 maund 1 1 1 1	6 0 0 4 0 0 2 0 0 8 0 3 [illegible] 0 3 0 0			
		Total	20 8 0			
Ditto ditto, 2nd class	Ditto	Little less than the 1st class	17 0 0	3 4 0	3 0 0	The existing rates vary from Rs 2 1 to Rs 5 3
Ditto ditto, 3rd class	Ditto	Little less than 2nd class	12 0 0	2 9 0	2 6 0	The existing rates vary from Rs 1 10 to Rs 3 3
Suna karpa or suna land on which karpas (cotton) is especially grown, 1st class	*Karpas* *Til* *Sharisa* *Jab* *Gram* *Bot* *Musori*	3 maunds 3 2 [illegible] 2 2 1½	1[illegible] 0 0 6 0 0 8 0 4 0 0 6 0 0 [illegible] 0 0 4 0	5 2 0	9 2 0	The rates vary from Rs 3 4 to Rs 6 2
		Total	[illegible] 8 0			
Ditto ditto 2nd class	*Karpas* *Til* *Sharisa* *Jab* *Bot* *Musori* *Gum*	2 maunds 2½ 1½ 1½ " 1¼ " 1 maund 1½ maunds	10 0 5 0 0 6 0 0 3 0 0 3 12 0 3 0 0 4 8 0	3 4 0	7 1 0	The rates vary from Rs 2 14 to Rs 5 2
		Total	35 4			
Suna karpa or suna land on which karpas (cotton) is especially grown, 3rd class	*Karpas* *Til* *Sharisa* *Jab* *Bot* *Musori* *Gum*	2 maunds 2 1 maund 1 1 ¾ " 1	8 0 [illegible] 0 0 4 0 0 [illegible] 0 0 2 8 0 1 8 0 3 0 0	3 11 0	5 0 0	The rates vary from Rs 2 7 to Rs 5
		Total	25 0 0			
Suna ikhshu or suna land on which sugarcane is especially grown, 1st class	Sugarcane Til	12 maunds 4 "	[illegible] 0 0 4 0 0	4 12 0	8 0 0	The rates vary from Rs 4 1 to Rs 5 15
		Total	40 0 0			
Ditto ditto, 2nd class	Sugarcane Til	10 maunds 1½ "	30 0 0 3 0 0	3 14 0	6 10 0	The rates vary from Rs 3 1[illegible] to Rs 5 4
		Total	33 0 0			
Ditto ditto, 3rd class	Sugarcane Til	8 maunds 1 maund	24 0 0 2 0 0	3 2 0	5 3 0	The rates vary from Rs 3 to Rs 5 4
		Total	26 0 0			
Sharisa danga or high land on which sharisa (a kind of oil seed) is grown	Sharisa (oil-seed)	1 maund	4 0 0	0 15 0	0 13 0	The rates vary from annas 12 to Rs 1-8
Til danga or high land on which til (a kind of oil-seed) is grown	Til	2 maunds	4 0 0	1 0 0	0 13 0	The rates vary from annas 12 to Re 1 4
Biri danga or high land on which biri (a kind of pulse) is grown	Biri	2 maunds	4 0 0	0 14 0	0 13 0	The rates vary from annas 10 to Re 1 8
Musori danga or high land on which musori (a kind of pulse) is grown	Musori	1 maund	3 0 0	0 11 0	0 10 0	The rates vary from annas 8 to Re 1 8

No 686 T R, dated 3rd September, 1883

From—C W BOLTON, Esq., Under Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Legislative Department.

In continuation of my letter No. 583 T. R., dated the 24th August, 1883, I am directed to submit, for the information of His Excellency the Governor General in Council, the accompanying copies of report* on the provisions of the Bengal Tenancy Bill, 1883, from Dr Ram Das Sen, zemindar of Berhampur, submitted through the Commissioner and the Board of Revenue.

* Received with memorandum No 267K.L., dated the 1st August, 1883, from the Commissioner of the Presidency Division.

Dated Berhampur, the 16th July, 1883.

From—Dr. Ram Dass Sen, Zemindar, Berhampur,

To—The Collector of Moorshedabad.

With reference to your circular No. 91G., dated the 7th April last, I have the honour to submit the following opinion on the Bengal Tenancy Bill. The delay that has occurred in sending this in was unavoidable. The matter is important and required study, and I was waiting to hear and read what the press and public had to say upon it.

That legislation has become necessary upon the subject it is now too late to deny. The zemindars to whose class I belong, have moved for some amendment of the existing law. But what is wanted just now, in my opinion, is legislation providing an easier scheme for the settlement of rents and increased facilities for collecting the same without changing the substantive law on the subject. What changes have been effected in that law by Act X of 1859, and judicial interpretations of the provisions of that Act, though trenching upon the vested rights of landlords, constitute a sufficient fulfilment of the promise held out to the ryots at the time of the permanent settlement; and it would be going too far to say that to redeem that pledge the legislature are bound to unsettle a state of things that has obtained for three quarters of a century by what has been called by some of the speakers of the Legislative Council a redistribution of property at the expense of the zemindars and to the advantage of the ryots.

Before proceeding to comment on some of the leading principles and details of the Bill, I beg to observe that the framers of the Bill, in their anxiety to secure the advantage of the subordinate tenure-holders at the cost of the zemindars, have overshot the mark by conferring all the benefits of the proposed measure upon intermediate tenure-holders or middlemen instead of upon the actual cultivators in whose interest it professes to have been framed. These latter, if holding under a superior tenant, will not acquire the right of occupancy and will have to pay a higher rent than if they held directly under the zemindars.

CHAPTER II.

Sections 5-13.—This chapter is highly objectionable. Perhaps the provisions of the chapter are based on the supposition that in the interest of the Government revenue the largest quantity of land appertaining to each mehal should be let out to ryots, and that therefore, the right of the zemindar to increase the extent of his khamar or zerati land should be closely curtailed. But as a matter of fact, so far at least as Bengal is concerned, land is not so much in demand, and competition for it is not so sharp as would justify the theory upon which this chapter rests. But even if there were such competition, and there were strong economic reasons for the change, I believe that the Legislature could not, in the face of the permanent settlement, effect the change without laying itself open to the charge of breach of faith towards the zemindars. What means proprietary right if the zemindar could not be allowed to exercise actual ownership over lands which are not in the possession of occupancy ryots or ryots of any description, which are just now lying fallow, but which the zemindar has not used or may not have had occasion to use continuously for 12 years next before passing of the Act. I do not object to a cadastral survey of land in Bengal, and let ryots in actual occupation be protected in their rights, so far, of course, as such rights are consistent with the rights of the zemindars. But would it not be fair to the latter to let them deal with the remainder at their pleasure? It is a mistake to suppose that zemindars do not, or cannot, make as good or better use of land than ryots. We have khamar lands in our mehals and we can bear testimony to such lands being the best cultivated.

CHAPTERS III AND IV

embody and re-enact the law as it stands at present, but section 17 introduces a change which cannot be supported upon a construction of the present law or upon principles of equity, for a separation, unless made with the sanction of the zemindar, would involve a distribution of the rent and amalgamation with other land, for however short a time would attach permanency to the tenure in respect of the additional lands.

Section 22 puts a limitation upon enhancement by declaring that in no case more than double the rent previously payable can be demanded. Why so, if more than double be considered to be a fair and equitable rent? I should think the Legislature had better leave it to the courts to decide what would be fair and equitable rent in any particular case, without providing any arbitrary limitation in that behalf.

CHAPTER V.

The changes sought to be introduced by this chapter are quite novel, and open to serious objection. One most remarkable feature of this chapter is that it takes away the power of private contract between zemindar and ryot whenever such contract is opposed to its provisions. Do the framers of the Bill suppose that the ryots, specially the ryots of Bengal, are so ignorant of their rights that stringent provisions in restraint of the power of contracting should be introduced? If so, they are mistaken, and even if not mistaken, it is opposed to the principles of the law of contracts, and to the principles of political economy also to impose such restrictions. The provisions as to the acquisition of occupancy rights ought to be so framed as to leave the power of private contract untouched.

Section 45.—The words in this section "and though the land so held by him at different times during that period may have been different" ought to be omitted. There could be no

harm if the ryot commenced with a quantity of land, and at the close of the 12th year, it was found to have been reduced. But it would not be fair to give the ryot the status of a settled ryot in respect of additional land which has come under his cultivation during the 12 years, say, for instance, a large addition made in the 11th year.

Section 47.—The objection as regards section 15 applies to this section also. The settled ryot ought not to be held to have acquired the right of occupancy in respect of lands which he has held for less than 12 years.

Section 56.—This section appears to be a necessary corollary to Chapter II, for if the zemindar cannot extend his khamar or zerati land beyond its present limits, all ryoti land, though it might revert to him by purchase, would continue to retain its character of ryoti land. But it goes further, and proposes to give to the ryot with whom zemindar may settle it, after such purchase, the same status which the previous tenant acquired after 12 years' occupancy, notwithstanding any contract to the contrary. While if a ryot acquired it he could sublet it, the sub-lessee acquiring no right of occupancy. Under the present rent law the right of occupancy is a personal right, accruing to a tenant under certain conditions and being transferable only according to custom. But this section proposes to declare to be a quality attaching to the land and inseparable from it after a certain tenant has acquired the right of occupancy in respect of it. In short, it is to be a personal right in regard to the first occupancy tenant, but a right attaching to the land after that tenant gives up, or the zemindar acquires it otherwise. This section neutralizes the effect of the foregoing provisions as to right of pre-emption of zemindar, for no zemindar would choose to lay out capital in the purchase of such tenures with the incident of the right of occupancy inseparably attaching to it.

This section and the six sections preceding it are calculated to create different grades of tenures intermediate between the landlord and the actual cultivator, who will acquire no right of occupancy, and whose position, which the Bill professes to ameliorate, will remain the same as it is.

CHAPTER VI.

The restraint upon the freedom of contract is inequitable, and the objection upon this ground to the provision of Chapter V applied also to this chapter.

The limitation of the zemindar's demand when rent is paid in money to a fifth of the average annual value of the gross produce of the land in staple crops (article 59, column 2, section 61, clause 2, section 64 and section 75) is opposed to the spirit of the permanent settlement, and finds no support either from reason or history. While the Hindus were the ruling race the ordinary *pykast* ryots were entitled to 50 per cent. of the produce, and the immigrant *khadkastas* to 45 per cent. Numerous authorities might be quoted in support of this proposition, but I consider it useless. The original *khadkastas*, however, paid a higher rent than either the pykastas or the immigrant khadkastas, their share being less than 45 per cent. But the present Bill, by fixing the share of the occupancy ryot at 50 per cent., would place him at a higher position than his forefathers, the original *khadkastas*, enjoyed. The supporters of the Bill would say that under British rule a strong competition for land has come into existence and the khadkasta now pays a lower rent than the pykast. To them my reply is that, while they recognise competition by rendering all occupancy tenures transferable, they ought to recognise the same by leaving rents payable by ryots open to be determined by competition. They tell us, zemindars, whatever may be extent of demand for land and however strong the competition for it, you will not be entitled to more than a fifth of the value of the produce if paid in money, and to a half if paid in kind (which half by the way may be commuted to money rent at the instance of the tenant, section 82), and all the profits arising from increased competition must go into the pockets of the innumerable intermediate tenure-holders, petty taluqdars in their own way, whom we want to introduce, but we will take good care that the actual cultivators are not rack-rented, and we provide section 119 for that purpose. But if there be any competition, it will be strongest amongst cultivators, and section 119 will, I fear, be found to be quite inoperative, for, as pointed out by Rajah Siva Prosad, there will be nothing to prevent tenure-holders from insisting on the payment, in an underhand way, of more than the amount limited by section 119. By the permanent settlement, the State share of the produce was given to the landlords, and the revenue assessed represented that share. Looking at the state of things at the time of the settlement, we find that the State share of the produce, and consequently the revenue, represented more than half. How can the Government now go back and settle money rent at one-fifth?

Section 81, clause (*a*), limits the zemindar's demands when paid in kind to a half. As a matter of fact, in Behar $\frac{9}{16}$ths is now willingly paid by the ryots. Why interfere with rates settled by custom, specially when serious consequences will follow from the discontent that will necessarily be created among the land-holding classes?

Sections 82-84.—The same objection on the ground of restraint upon the freedom of contract, though payment in kind is very rare in Bengal, and Bengal zemindars are never unwilling to receive payment in money.

CHAPTER VII.

The present rent law does not contain any specific provision in regard to bastu land, but judicial decisions have declared such holdings to be the subject of contract, express or implied. Section 85 is directly opposed to the current of such decisions. In this section also we meet with the words "notwithstanding any contract to the contrary." But in section 86 it is provided that a bastu ryot shall be liable to ejectment on breach of any condition of a written contract between himself and his landlord, consistent with the provisions

of this Act. I for one cannot concur what such a contract may be. There is the Act itself between the landlord and the tenant, and a contract consistent with its provisions is a misnomer. But such contract or no contract, even if the court decrees ejectment, the landlord must pay compensation for houses, &c., which he may not require, and the materials of which the ryot might sell or remove at his pleasure.

CHAPTER VIII.

This introduces novel changes, which even official Members of Council characterized as dangerous. The non-occupancy ryots or tenants are granted privileges which they never enjoyed: they shall not be ejected notwithstanding any contract to the contrary, except as provided in clauses A, B and C of section 90, and if ejected on refusal to pay enhanced rent, they shall be entitled to compensation for improvements, and a further sum for disturbance equal to ten times the yearly increase of rent demanded; their rent shall never exceed $\frac{5}{8}$ths of the value of the gross produce (section 119). The compensation clause introduces a provision which is quite opposed to the spirit of the law of land tenures of this country. It is an offshoot of foreign law sought to be engrafted upon the historical land law of this country with a view perhaps to try an experiment. But experiment in this direction will never succeed, as it has perhaps in matters of adjective law, evidence and contract. As regards the rent payable, a distinction is attempted to be made between occupancy and non-occupancy ryots, a distinction which has never been countenanced by the law of Bengal.

CHAPTER IX.

Sections 100-102 will greatly increase the cost of collection, and to prepare a full statement at the close of the year will be found impracticable in many cases. Then again the expression *close of the year* is not clearly defined. Does it mean the 30th day of Choitra where the Bengali year prevails? If so, it would be impossible to expect adjustment of accounts with the tenants on that day. As regards the penalty provided in sub-section 3 of section 102, what if gomastas or mahs neglect or contumaciously refused to do the needful? Suits against gomastas and tehsildars are of so frequent occurrence that the framers of the Bill ought to have taken note of it.

D. Section 103, sub-section (*a*) is calculated only to create disputes between landlords and tenants on trifling causes. Where tenants have combined against landlords it will add strength to such combination. Under the existing law, refusal on the part of the zemindar to receive rent only entitles the tenant to deposit, but under sub-section (*a*) the tenant will be able to deposit if only he has reason and not even *bonâ fide* reason to believe that payment will be refused.

F. Section 117.—The penalty is opposed to even current decisions which lay it down that there can be no criminal trespass in respect to joint property. And when the landlord is entitled to a share of the crop it would be inequitable to hold him guilty of that offence. It may so happen that there may be no time to proceed under section 112, while it may be highly necessary that the landlord should cut and store the crop.

G. Section 119.—It is arbitrary and impolitic to fix the rent payable by under-ryots and non-occupancy ryots at $\frac{1}{12}$ths. This provision will be merely a dead letter, as explained above.

CHAPTER X.

Section 126, sub-section (*f*).—Dwelling-houses are always erected by ryots; and leaving the holding they leave the dwelling-house, unless by special arrangement with the landlord, they are allowed to retain the dwelling-house. To include dwelling-houses in the definition of improvements for which the zemindar, in case of ejectment, will have to pay, is improper.

CHAPTER X.

With reference to this chapter, I beg to repeat what I have already said above, that an unnecessary and inequitable limitation is sought to be imposed upon the right of private contract, section 132, and that the proposed compensation for disturbance introduces a strange innovation into the land law of this country. If you want occupancy and other ryots to make improvements, let them do so under contract with their landlords.

CHAPTERS X AND XII.

Not quite objectionable, though extensive powers are proposed to be conferred on Settlement Officers.

CHAPTER XIII.

This chapter is highly objectionable in taking away from the landlords the powers to distrain without the intervention of the courts, which they have enjoyed for a considerable length of time. The power of distraint is said by the supporters of the Bill to be an offshoot of the English law. But it has also been shown that the power is exercised in Native States, where the old land law of the country is still in force. The intervention of the courts will render the provisions as to distraint not only ineffectual, but expensive in the highest degree. To the best of my knowledge very few cases of wrongful distraint have been brought before the courts, and the restrictions upon the power in the shape of penalty in case of wrongful distraint is a sufficient guarantee that no unwarrantable use would be made of that power.

The remaining chapters of the Bill deal with the adjective or procedure part of it. It is, however, the substantive part of it that is chiefly objectionable, the procedure portion being necessarily but a sequel to it.

No 810G , dated Berhampur, the 24th July, 1883

Memo by—The Collector of Moorshedabad

Copy forwarded to the Commissioner of the Presidency Division, in continuation of this office No 698G., dated the 10th instant.

No. 267K L , dated Calcutta, the 1st August, 1883.

Memo by—J MONRO, Esq , Commissioner of the Presidency Division

Copy submitted to the Board of Revenue, Lower Provinces, in continuation of this office letter No. 188R L., dated 2nd July last

Notes by Hon'ble T M Gibbon.

CHAPTER I.

Section 3 says

"The following definitions and rules shall apply in the construction of this Act unless there is something repugnant in the subject or context —

"(1) 'Estate' means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Collector of a district "

"(3) 'Tenure' includes an under-tenure and the interest of every tenant of the class referred to in section 14

"*Illustrations.*—(*a*)—A dar-patní or si-patni interest of a mokurreree holding is a tenure, (*b*)—A dar-ijarah or a farm for a term of years is a tenure."

Section 14 says—"Whereland has been held by a tenant and his predecessors in interest at a rent which has not been changed from the time of the Permanent Settlement, then, subject to the provisions of this Act, the rent shall not be liable to enhancement, and the tenant shall be deemed a tenure-holder for the purposes of this Act.

"(5) A person shall not be deemed to be a raiyat in respect of any land, or to hold that land as a raiyat, unless he holds it for the purposes of agriculture, horticulture or pasture, or he or his predecessors in interest came into possession of it for such purpose: Provided that a person shall be deemed to hold as a raiyat any bastu or homestead land included in the same holding with other land held by him as a jotet

In the Bengal Rent Commission's Bill this clause stands as follows —"In this Act the following words and expressions are used in the following senses unless a different intention appears from the context." The clause as it stands in the Bill is not an improvement on the above In reference to any rights belonging to a landlord likely to be affected, the definition here given is ample, but it is worth while considering how far the interests of the raiyats would be affected by it. To do so it is necessary to read 43B with it.

43B says —"Where two or more estates have been created by one or more partitions taking place since 1st January 1853, the area comprised in the parent estate of which they would have formed part if no such partition had taken place shall be deemed to be a single estate"

Section 45 (1) says —"A raiyat who has continuously held any land for a period of 12 years shall become a settled raiyat of that estate"

Section 47 says —"Every settled raiyat of an estate shall have rights of occupancy in all land held by him on that estate" As I read the Act, the raiyat of a landlord holding his estate registered under two or more towjee numbers may have occupancy-rights in land situated in one portion of the estate, and not in another

The definition should, I think, be so far modified as to embrace the whole estate (as one estate) of one proprietor No direct definition of the term "tenure" is here attempted Section 14 and the illustrations here given are intended to cover all classes of tenures.

Although a jaghir is a service-tenure and liable to be cancelled at the will of the landlord, it may be necessary to modify the above definition in such a way as to cover such and all tenures, or raiyats holding from tenure-holders may be deprived of their holdings.

The Rent Commission defined a tenure (1) "as a rent-paying interest in land immediately subordinate to that of a proprietor and superior to that of raiyat; (2) a revenue-free or rent-free interest in land when there exists no rent-paying interest in the same land between the proprietary interest and such revenue-free or rent-free interest" The definition given by the Rent Commission of the term, modified in so much as to include all mokurrerees, all holdings under section 14, would be preferable to the one given in the Act.

A negative definition such as this is, is not sufficient, we require a positive one. It is not sufficient to know who "is not" a raiyat, we require to know who is to be considered one. Either the term "raiyat" should be properly defined, or an English term that is generally known used throughout the Act. The general meaning of the term "raiyat" is a "subject," also a "cultivator" It should be so defined as to include all persons engaged in agriculture, &c , it should include European as well as Native cultivators of the soil

It should not be left open to every moonsif in the country to put his own interpretation on the term

"*Explanation.*—A person may hold land for a purpose mentioned in this clause though he has sublet it."

"raiyat," or to deem a planter to be a raiyat or not as he thinks right. If not deemed a raiyat under the Act, all occupancy rights the planter may have already acquired would be forfeited.

The Rent Commission properly defined a raiyat to be "a person who holds land, or who occupies and cultivates land, if such person or his predecessor in title was originally let into possession of such land for the purpose of cultivating it or bringing it under cultivation. A person cultivates land or brings land under cultivation within the meaning of this definition when the cultivation is carried on by himself or by members of his family, or by servants or by hired labourers, or by persons to whom he has sublet the land or any part of it, or partly by some and partly by others of these persons.

Sub-section (6) *says*.—"'Under-raiyat' means a tenant holding land whether immediately or mediately below a raiyat."

The word "person" should be substituted for "tenant."

Sub-section (8) *says*:—"'Tenant' does not include any person who is not a tenure-holder, raiyat or under-raiyat or the tenant of a bastu holding."

Here, again, we require a positive instead of a negative definition. If the term "raiyat" is hereafter so defined as to include planters, a definition that would cover the parties mentioned will be sufficient. If any English term is hereafter substituted for the term "raiyat," the definition of the term "tenant" should be so altered as to cover whatever term may be used.

As it stands, it would appear as if we were to be left out in the cold. The Rent Commission defined a "tenant" as "a person liable to pay or deliver rent."

"(14) 'Agricultural year' means, where the Bengali year prevails, the year commencing on the first day of Bysakh, and, where the Fasli year prevails, the year commencing on the first day of Assin."

In Behár, for all purposes of agriculture, that is to say, in reference to charge of lands, possession of lands, &c., the agricultural year ends on the last day of Jeth and commence on 1st day of Assar. The rents become payable from Assin Sections 45 (2) and 57 declare that a person shall be deemed to have held as a raiyat any rayati lands held as a raiyat by a person whose heir he is.

"(17) 'Succession' includes both intestate and testamentary succession."

If it is possible to use the word "succession" in reference to property acquired by purchase, assignment or transfer, the definition should be so drafted as to allow of its being done, so that it may be taken for granted that the transferee succeeds as a matter of right to all the rights owned by the transferer.

In reference to the words "class" and "staple."

The word "class" is often used in the Act in reference to raiyats, tenants and lands; the word "staple" in reference to produce. Is it necessary to define the terms, or are their meanings made sufficiently clear from their context?

In reference to "class," I would ask this particularly, as to the effect section 74 (1) will have on our interests. In reference to "staple," I would ask whether a definition should be given to the term, or it be left to the Board of Revenue, as the Act says, to declare what shall be declared "staple" for the purposes of the Act.

When criticizing the provisions of chapter VI, I will again refer to the subject.

Remarks on Chapter II.

Khamar lands, spelt in the old Regulations as komer or khomar lands, are throughout this Bill looked upon as one and the same as nij-jote, sir or zerát lands.

Section 5.—"'Khamar land' means—

"1st, land situated elsewhere than in Bihar which a proprietor has held, whether under the name of khamar, nij-jote, sir or otherwise, as his private land for 12 continuous years before the commencement of this Act; and, 2nd, land situate in Bihar which (*a*) is recognised as zerat by a village-custom established before the commencement of this Act, or (*b*) is proved to have been held by a proprietor as zerat for 12 continuous years immediately before the commencement of this Act."

Does a Bengal ryot look upon them as such? If there is a difference, where lies the difference? Bell, in his glossary to Act VIII of 1869, says "'khamar' land, of which the revenue was paid in kind, or of which the produce was divided in determinate shares between the cultivator and the revenue-payer or zemindar, applied also to lands originally waste, but which, having been brought into cultivation, were retained by zemindars or were let out at a very small rent." "Khamar" is defined in Wilson's glossary as "a threshing-floor; the general threshing-ground of a village, to which all the crops are brought to be cleaned, and from which they cannot be removed until the landlord's claim is settled; land of which the revenue was paid in kind, or

of which the produce was divided in determinate shares between the cultivator and the revenue-payer or zemindar." "applied also to lands originally waste, but which, having been brought into cultivation, were retained by the zemindars in their own hands or were let out at grain-rent. At the decennial settlement, these lands, previously unassessed, were declared subject to assessment."

If the above definitions are correct, "khamar" lands cannot in any way be considered nij-jote or zerat, but are to all intents and purposes the same as our "bhaoli" lands; and, under the present law, it would not be necessary to show direct possession by the landlord to constitute them "khamar."

I believe in Bengal all lands lying waste, all drains, "duggers," roads, water-courses are looked upon as "khamar."

It is now proposed that a landlord shall have a right to claim such lands only as khamar, nij-jote, sir or zerat as he has held as his private land for twelve years continuously before the commencement of this Act.

What is to constitute "his having held as private land for twelve years continuous?" Is the possession of the ryot to be looked upon in these cases as the possession of the landlord, or is he to be allowed to retain in his possession only such lands as he has held and cultivated at his own expense for twelve years? Act VIII of 1869, section 6, says:—

"Every ryot who shall have cultivated or held for a period of twelve years shall have a right of occupancy in the land so cultivated or held by him" ..... "but this rule does not apply to khamar, nij-jote or sir lands let by him on a lease for a term, or year by year."

That is to say, if lands were once declared zerat or nij-jote, whether they were let to ryots or held directly, and cultivated at the zemindar's expense, they still remained zerat.

Is it the intention of the Act to dispossess the landlords of all lands they may have leased to others on the faith of this Act? If such is the intention, landlords should be allowed at least a twelvemonth to resume such lands after the present leases lapse.

Under section 27 of Act VIII of 1869, a ryot who had been ejected from his holding was compelled to bring his suit within a twelvemonth from the date on which cause of action accrued.

In sections 224 and 225, and schedule IV, which determine the periods allowed for the institution of suits under the Act, no mention is made of the period such a suit would run. Is it intended to compel the landlords to prove their titles to all lands they at present hold, to set aside titles perfected by the lapse of time; in fact, to allow ryots to challenge the claims of zemindars to lands in their possession, by increasing the term allowed for bringing such suits, from one to twelve years, with a retrospective effect?

Whatever time may be allowed to persons claiming in the future to be wrongfully or forcibly ejected from their lands, the present law should hold good as regards the past.

Section 6.—"All land which is not khamar land of some estate shall be deemed to be ryot land, and all land shall be presumed to be ryot land until the contrary is proved."

By casting the onus of proof on the zemindar, ryots will be directly encouraged to encroach on the landlord's rights.

A ryot is entitled to the possession of only such lands as he may have fairly received possession of, with the consent direct, or implied consent, of his landlord, and on which he pays rent.

Hitherto all waste lands, all alluvion (other than land reformed on old holdings), all jungle, have been considered at the disposal of the landlord; but from the Statement of Objects and Reasons, published with the Bill, it would appear as if the landlord's rights to hold land was to be limited to the land he may show that he has held for 12 years; the rest is to be considered destined for the occupation of the ryots.

At the time of the Permanent Settlement, the discussion arose as to whether the land lying waste was to be considered the property of the Government or the property of the landlord, and decided in favour of the landlord; there was never any question as to whether it should go to the landlord or to the ryot.

To cast the onus of proof on the zemindar and not on the ryot is wrong in theory, and will be equally inoperative in practice. The Rent Commission, under section 81 of their Bill, define zerat land "as land the cultivation of which has been carried on for 12 years continuously wholly on behalf of the proprietor, and at his sole risk, with his own stock, or by his servants, or by hired labourers, or partly by some and partly by others of those persons."

This definition, excepting in so much that the landlord must prove 12 years' continuous holding, and only refers to proprietors, not landlords in general, is correct.

In North Bihar, and I believe in Bihar generally, the custom was formerly that zerat lands leased to the ryots on the "bhaoli" system reverted to the landlord whenever he required them, but, once leased on a money-rent, they were merged in the rest of the ryoti lands, and the landlord had no more right to resume them than he had to resume other ryoti holdings.

Acts X of 1859 and VIII of 1869, contrary to custom, declared lands once zerat, always zerat. In this respect they have done much to unsettle ryoti holdings, and I would gladly see the former custom reverted to. A landlord at present holding land and cultivating it himself as zerat should be confirmed in his title.

Any landlord who has, in accordance with the provisions of Act VIII of 1869, leased to ryots any zerat lands that he has cultivated at his own expense any time during the last five years, should be allowed to resume those lands within a given time after the expiry of the term for which they are at present leased; lands not resumed within the terms allowed to be ryoti.

If necessary, claims to land, the leases of which do not expire for some time after the passing of the Act, might be registered. A ryot claiming land that he has been forcibly dispossessed of to be allowed one year to file his suit, in cases where the lands have been given to other ryots, and three years in cases where his lands are held directly by the landlord; that is to say, one year to perfect ryot's title, three years for zerat, after passing of Act. All lands lying waste should be at the disposal of the landlord, to cultivate himself, reserve as grazing-grounds or to lease to ryots.

The word "khamar" may cover these in Bengal; zerat certainly does not in Bihar.

These sections refer to lands held by the "proprietors;" they say nothing of lands held by landlords generally.

Section 7.—"The Local Government may direct that a register shall be made of khamar lands situate in any district or part of a district."

Sections 7 to 13 inclusive direct that a register of khamar lands shall be made.

I do not object to these sections as they stand by themselves, but, coupled with the foregoing, they will lead to endless litigation.

The Act does not say who is to pay for the preparation of the register.

CHAPTER III.

OF TENURE-HOLDERS.

A.—The Right to hold at fixed Rents

Section 14 says—"Where the land has been held by a tenant and his predecessors in interest at a rent which has not been changed from the time of the Permanent Settlement, then, subject to the provisions of this Act, the rent shall not be liable to enhancement, and the tenant shall be deemed a tenure-holder for the purposes of this Act."

Section 15 says—"Where land has been held by a tenant and his predecessors in interest at a rent which has not been changed for 20 years, then, subject to the provisions of this Act, it shall be presumed, until the contrary is shown, that it has been held by them at that rent from the time of the Permanent Settlement."

Sections 14 and 15 of the proposed Tenancy Bill are the same in substance as sections 3 and 4 of Act VIII of 1869. They equally allow all ryots, who have held their lands at one rental from the time of the Permament Settlement, to hold their lands at such rental in perpetuity. By creating a presumption of law in favour of the ryots, they throw the onus of proof on the zemindars.

They differ in so much only that section 14 of the Tenancy Act says, where the ryot has held at "a rent" which has not been changed, section 3 of Act VIII of 1869 says "at fixed rates of rent."

They are wrong in principle and injurious in practice, and the legislature, in decreeing to the ryots a right to hold their lands at fixed rates in perpetuity, in granting them the means of acquiring further rights in the future, has exceeded the powers it reserved to itself at the time of the Permanent Settlement. It has transferred the proprietary right in the soil from the landlord to the tenant. They are injurious in practice, as they have destroyed the landlord's faith in the consistency of our laws, and compelled many landlords, who might otherwise have been lenient to their ryots, to raise their rents every few years, for fear of losing the power to do so for ever: they have rack-rented many estates. In my humble opinion, although the Government, at the time of the Permanent Settlement, distinctly reserved to itself and to its successors the power to enact such laws as they might deem necessary for the protection and welfare of their subjects, it nowhere reserved to itself the power of, or the right to transfer the proprietary interest in the soil from one class of people to another: and unless it can be shown from the laws then passed that it was intended that the rents then paid for land by ryots was not to be enhanced at any subsequent period, the Government of 1859 went beyond the spirit of the Settlement in providing ryots with the means of acquiring a right to hold at fixed rates in perpetuity.

It may be open to dispute as to the extent the Government of the day intended zemindars to participate with the ryots in the future prosperity of the country; but to me there is no doubt whatever that they did intend them to participate proportionately in it, and that they had no intention whatever of reducing them to the position of annuitants on their estates.

Many of the able men who have lately written on the right to enhance have quoted despatches and correspondence which passed between members of the Government to show the "intention" of the legislature at the time; but, for us planters, our brief is confined to the regulations and the rules laid down for the guidance of the Revenue officers; beyond these we cannot tread. Not one in a hundred of us, who will be affected by the law, have an opportunity of perusing the correspondence, nor would it, if produced in a Court of law, affect our rights in the slightest degree.

When the subject of enhancement of rents was discussed by the Bihar Rent Commission, I was not able to attend. When I wished to re-open the question at a subsequent meeting, it was decided that the question of the zemindar's right to enhance had been fuly discussed, and the question would not be re-opened.

The Bengal Rent Commission in their report say:—"*Section 24.*—We have also retained the presumption, provided by the existing law, that, when the rent of a tenure is proved not to have been changed for a period of 20 years before the commencement of the suit, it shall be presumed that such tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown or it be proved that such rent was fixed at some later period. It has been decided that this presumption may be rebutted by evidence of the creation of the tenure at some period subsequent to the Permanent Settlement, and we have introduced words to that effect into the section of the Bill. It has been pressed upon us that this presumption bears very hardly upon zemindars; that, if a tenure-holder succeeds in proving payment of rent for 20 years at the same rate, it is very difficult, if not impossible, for his landlord to rebut the presumption which upon this is raised by the Act; that it thus becomes dangerous to allow tenure-holders to remain undisturbed, paying the same rent for 20 years; and that zemindars are in consequence forced into litigation, lest their rights should pass away *sub-silentio*. We have considered these arguments, and they failed to convince the majority of us that a case has been made out for altering the law, especially now that more than 20 years have elasped since the statutory presumption was created. If the law were now changed, the change would destroy titles which have become perfected by the presumption. The zemindar has it in his own power, by preserving a proper record of transactions affecting tenures not entitled to the benefit given by the presumption, to prevent prejudice to his own interests in the future. Looking at the question from another point of veiw, it is very much more difficult for a tenure-holder to prove a title from the time of the Permanent Settlement than for the zemindar to prove that the tenure was created or the rent fixed at a

later period, or that the rent has been changed on one or more occasion since the Permanent Settlement."

The above arguments refer to tenure-holders under the present law. Under paragraph 27 they have made them equally applicable to ryots. It will be observed that the Commission makes no attempt to show that ryots were accorded the right to hold at fixed rates in perpetuity at the time of the Permanent Settlement. It simply says that, were the law now changed, the change would destroy titles which have become perfected by the presumption.

If I understand the object of the new law rightly, it is to reinstate people who have suffered at the hands of the legislature in their rights; and, although it would be an injustice to destroy titles perfected by the presumption, it is only an act of justice to the zemindars to cancel the ryot's power of acquiring fresh rights in the future. Unless it can be shown that Act X of 1859 only confirmed the ryots, in their rights, or that the legislature of the day reserved to itself the right to fix the amount to be received by the zemindar as rent for his land in perpetuity, the zemindar will have a grievance and a right to ask for redress. If the law remains in force, it would surely and certainly undermine the zemindar's title, or rack-rent the country or, the instant an attempt is made to prepare a record-of-rights, ruin both ryot and zemindar with litigation.

Regulation I of 1793, better known as the Act of Permanent Settlement, does not, as far as I can judge, contain one word to show that, in settling the zemindars' jamma in perpetuity, it was intended to fix the rents then paid by ryots for their lands in perpetuity also; whereas much in many Regulations passed subsequently goes to show that the legislature had no such intention.

Some writers have founded the ryot's right to hold at fixed rates on the wording of some of the clauses of Regulation VIII of 1793, overlooking the fact that Regulation VIII was simply a reprint of Regulations passed in 1789 and 1790; that, if Regulation I of 1793 had never received the sanction of the Court of Directors, Regulation VIII would still have been the law of the land, and the term allowed to zemindars for revising and consolidating *abwabs* and issuing pattas had expired two years before the clause was embodied in Regulation VIII of 1793.

Had the legislature of the day intended the ryots to hold at fixed rate in perpetuity, it would, I think, have taken measures to ascertain at what rates the ryots were really holding their lands, to keep some record of them, and not forbidden their officers to enquire into the subject, as was done under the circular orders issued to the officers making the settlement and also under the Regulation.

In making the settlement with zemindars, no attempt was made to ascertain at what rates ryots held their lands: the farming jammas or rent paid by the mootahids was alone called for. It was only in 1817 that it was thought necessary to keep a record of the ryots' holdings, and that Collectors were allowed some control over patwaris' accounts.

If it had been intended that ryots should hold at fixed rentals in perpetuity, section 56 of Regulation VIII of 1793 would not have remained law, nor would the term of the leases to be given to ryots have been limited to ten years.

Had the legislature intended to allow the ryots to hold their lands at fixed rents in perpetuity, they would not have allowed purchasers at revenue-sales to set aside all previous engagements made by the defaulters with their ryots; if they intended to do so, they were guilty of great injustice. Under Regulation VIII of 1793, only a certain class of mukarari tenures were upheld; the rest were declared illegal.

I am sorry to say I cannot see the force of the arguments advanced by the Rent Commission for allowing the 20 years' presumption in favour of the ryot to remain law. I do not believe that the lawyers who sat on the Commission would, if sitting in judgment on a case, allow them to hold good in reference to a dispute regarding any other class of property.

Because one party to a dispute has it in his power to prove his side of the question more easily than the other party, it is no valid reason for casting the whole onus of proof on such person; if one person were to lend a thing to another, and that other were to say he had given it to him, and not lent it, I do not think the judge would enquire who could most readily prove his assertion, and cast the onus of proof on that person.

I may say at once that I do not think it possible for any ordinary ryot to trace his holding back to the time of the Permanent Settlement: men holding mukarari leases under mukarari sanads would be able to do so, but, never anticipating, being able to acquire a right to hold at fixed rates, they would naturally be careless of their proofs. I do not think they could in many instances trace their pedigrees, or tell who were the heads of their families at the time. It has been repeatedly stated that it is very easy for a landlord, by producing the records in his office, to prove his right to enhance the rents of the land. Before they repeat the assertion, I would recommend the persons who make it to try and produce evidence that will satisfy a Court of Law. Heaps of documents may be lying among one's records which are perfectly trustworthy and believed to be true by the person in whose possession they are, but of no value in a Court of law, because their *bona fides* cannot be proved or authenticated.

The Hon'ble Mr. Evans, in his speech in Council, states—"Any number of papers may be produced,—jammabandis, jammawasilbakis and the like,—but they are worth nothing. I don't say the zamindars have anything to do with the presentation in Court of untrustworthy documents; many of them are very respectable people; but the naibs or managers think nothing of fabricating a set of papers." And this I believe to be the opinion of every Judge in the country.

When once the Judge commences to try one's suit, believing any evidence one will bring forward has been fabricated, it is hard work to persuade him of the justness of one's claim.

It may be replied that, if the zemindar cannot lodge evidence that will be accepted as trustworthy from among his own records, it might be easy to procure copies of village-records from among the records filed in the Collectorates. When tested, this source also fails us. If all the earlier Regulations and reports of the Settlement officers are carefully perused, it will be seen how careful the Government of the day was to satisfy the zemindars that they did not wish to pry too closely into their private transactions with their ryots. The Collector of Sarun, sending in his report dated May, 1793, after first saying that all the records in the Sarun Collectorate had been burnt, and none were procurable for Sarun from kanungos, states that the kanungos furnished him with a very particular account for Chumparun for 1196, 1198 and 1199, &c., which he considered as sufficiently minute for the purposes required as far as relates to that part of the district.

In paragraph 4 of his report he says:—"The accounts kept by the Mufassal kanungos of Chumparun are always referred to on occasions of any difference between the landlords and farmers and ryots; and, as I have never seen their authenticity disputed by either party when produced in evidence, I considered them as entitled to perfect credit. It is necessary to observe, however, that the amount specified in their accounts is neither what is actually paid by the ryots to the farmer, nor by the farmer or thikadar to the proprietor, but the amount of the engagement contracted by the under-farmer, to whom, according to a very general practice in this district, the lands are rented by the person who holds in farm immediately from the proprietor. Of course, the jamma specified therein includes no part of the collections, which comes under the description of Mufassal akrajat." And, when we find the same officer later on excusing himself for being obliged to act contrary to the spirit of the 46th article of the Regulations and for calling for "abstracts" of their accounts from the patawris, I think we may take it for granted that no detailed jammabandis were taken at the time of the Permanent Settlement.

For 20 years after the Permanent Settlement the Collectors were forbidden to enquire too closely as to what rents were received by zemindars from their ryots. In what year the order was passed to lodge copies of jammabandis in the collectorate I do not know. The earliest jammabandis I have ever seen are dated 1229 Fash, &c., or 1822 A.D. Until 1873 the Government insisted on their patwaris filing their yearly accounts, and much valuable information was collected. A few years ago there was a new departure; the records of years were looked upon as rubbish and burnt.

We can now only fall back on the road-cess papers, which in many instances afford little or no information of the kind required, and are modern.

Section 16.—"When a tenant has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent shall not be deemed to have been changed within the meaning of sections 14 and 15 merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted to a fixed money-rent."

I do not quite realize the effect the last words—"or by reason of the rent having been commuted to a fixed money-rent"—will have.

If sections 14 and 15 are to hold good, the first portion of section 16 should also hold good. The latter portion of the section will create (I think) great confusion, and should be struck out.

Sections 17 to 24.—I do not think they call for any remarks from me. If 14 and 15 are hereafter modified or withdrawn, some of these sections will require to be altered; if 14 and 15 are to remain law, these should remain as they are.

C.—Of the Incidents of Permanent Tenures.

Section 25 says: "Every permanent tenure shall, subject to the provisions of this Act in respect of registration, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property."

Ryots claiming to hold from the time of the Permanent Settlement are, under the provisions of sections 14 and 15, tenure-holders. Unless the legislature is prepared to alter the present registration law and make the registration of wills compulsory, or specially provide for the registration of ryots' wills, I do not think it advisable to give the ryot the power to bequeath his property to others, and I think some distinction should be made here between tenure-holders whose titles are undisputed and ryots who claim to hold at fixed rates, but whose claims have never been directly acknowledged in a Court of Law or by the landlord.

D.—Of the Registration of Transfers of, and Succession to, Permanent Tenures.

Section 27 to section 35, sub-section (2).

Section 27.—"Landlord bound to register voluntary transfer or succession on application."

Section 28.—"Application may be served through a Revenue officer."

Section 29.—"Registration in case of transfer by sale in execution of decree other than decree for rent."

This I believe to be a very important chapter—of importance to the zemindar as well as to the ryot—a necessity to us as traders.

Its utility should be increased—

1st, by laying down some rules for the guidance of the zemindars in cases of disputed titles;

2nd, by giving zemindar some power to make a temporary division among heirs;

Section 30.—"Registration in case of transfer by sale in execution of decree for rent or by summary sale."

Section 31.—"Effect of omission to register voluntary transfer."

Section 32.—"Application to Court to compel landlord to register."

Section 33.—"Application by landlord to compel registration."

Section 34.—"Landlord to give copies of entries in the register."

Section 35.—"Board of Revenue to make rules regarding registration."

3rd, by declaring the effect a certificate of registration from the zemindar's court is to have; whether it is to carry the same value as a decree of possession passed by a criminal court, or what?

The payment of all arrears of rent due to the landlord at the time of transfer should be compulsory.

It should also be declared that any right of pre-emption the landlords may claim under subsequent sections of the Bill shall not be vitiated by registration of transfer being compulsory under this chapter.

Section 33, sub-section (*3*), should carry costs.

CHAPTER IV.

Of Patni Tenures.

Section 36.—"Patni tenure means a tenure of the kind described in schedule II annexed to this Act, and includes the dar-patni and other similar under-tenures referred to in that schedule."

Section 39 says: "When a patni tenure is transferred otherwise than by sale in execution of a decree, or by summary sale under section 42, the landlord may refuse to register the transfer under Chapter III of this Act until the security required under section 38 is furnished."

Section 42 allows "recovery of rents by summary suit."

The zemindars should, I think, have the power to refuse to register unless all arrears of rents are paid; but I hardly think it necessary to demand security from this class of tenure-holders; the tenure itself is security sufficient. The tenure-holder's duly authorized agent should also have power to register.

I am also of opinion that the procedure laid down in regard to patni tenures should be extended to all permanent tenures other than ryoti tenures referred to in sections 14 and 15.

CHAPTER V.

Of Occupancy-ryots generally.

"Village" and "Estate."

Section 43 with sub-sections (*a*) and (*b*) interpret the terms. I have already referred to the interpretation put on "estate." I will only now say that I think a ryot holding lands in two villages the property of one person should acquire occupancy-rights in both. Because the two villages are entered under different towjee numbers should make no difference to the ryot.

Section 44.—"Every ryot who, immediately before the commencement of this Act, has, by the operation of any enactment, by custom having the force of law, or otherwise, a right of occupancy in any land, shall, when this Act comes into force, become, for the purposes of this Act, an occupancy-ryot of that land."

Section 44 is intended to confirm all who have acquired occupancy-rights under any custom or law now in force in those rights. It speaks for itself.

Section 45 (1).—"Every person who for a period of twelve years, whether before or after the commencement of this Act, has continuously held, as a ryot, ryoti land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to have become on the expiration of that period a settled ryot of that village or estate."

The period of 12 years' continuous holding, necessary to acquire a right of occupancy, is, in my opinion, too long a term. Ryots receive leases usually for five years; it therefore necessitates the ryot taking three leases of his lands before he can acquire an occupancy-right; but, as the Supreme Government has definitely accepted the 12 years' test, there is nothing to be gained in discussing the subject. Seven years would, in my opinion, have been preferable—five years for the usual lease and two years over to show tacit consent of landlord. On the other hand, it is necessary to take precautions against allowing ryots to acquire occupancy-rights in lands they have not fairly leased from their landlords, and I do not think sufficient precautions against trespass have been taken in the wording of this section.

(2) "A person shall be deemed for the purposes of this section to have held, as a ryot, any ryoti land held as a ryot by a person whose heir he is."

The same should be said of the person purchasing the rights of an occupancy-ryot and transferees in general. The Act, as far as I can remember, nowhere defines the position of a transferee.

Section 46 says: "If a settled ryot of a village or estate has ceased for a period of one year, whether before or after the commencement of this Act, to hold ryoti land as a ryot in that village or estate, either alone or as a co-sharer with others, he shall be deemed to have ceased on the expiration of that period to be a settled ryot of that village or estate."

Section 47—"Every settled ryot of a village or estate holding after the second day of March 1883, as a ryot any ryoti land comprised in that village or estate, shall, notwithstanding any contract to the contrary, be deemed to acquire, or have acquired, in that land a right of occupancy under the law for the time being in force:

"Provided that a person shall not acquire a right of occupancy under this section in respect of any land held by him alone as owner, tenure-holder or zuradar"

Section 50 says "When a ryot has an occupancy-right in respect of any land, the following provisions shall, notwithstanding any contract between him and his landlord to the contrary, apply, namely —

"(*a*) He may use the land in any manner which does not render it unfit for the purposes of the tenancy.

"(*b*) He may make improvements on the land as by this Act provided.

"(*c*) He shall pay rent at fair and equitable rates, determined as by this Act provided.

"(*d*) He shall not be ejected by his landlord from the land, except in execution of a decree for ejectment, passed in accordance with this Act, on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with the provisions of this Act, and on breach of which he is under the terms of a written contract between him and his landlord, liable to be ejected.

"(*e*) He may sub-let the land or any part thereof.

"(*f*) His interest in the land shall, subject to the rights reserved to the landlord by this Act, be capable of being transferred and bequeathed by will, in the same manner and to the same extent as other immoveable property.

The word "estate" should, I think, be left out of the section. The section should also say that the landlord may take possession of the land without suit

A ryot may hold in several villages of a large estate paying rents to different landlords or zuradars or tenure-holders, it may suit his convenience to abandon the lands in one tenure and not in the others, and yet, as the section is worded, the landlord would be debarred from taking possession of the land.

Great exception has been taken by sundry persons who have advocated the cause of zemindars to the words "notwithstanding any contract to the contrary" being entered in sections 45 and 47.

In my opinion, they are absolutely necessary to prevent the ignorant from contracting themselves out of their occupancy-rights

In the majority of such cases, the ryots contract themselves out of their rights without receiving any consideration, compensation or equivalent in return.

The word "solely" should be substituted for "alone," or "alone" should be placed at the end of the sentence

To the ryot this is infinitely the most important part of the Bill, and the only portions of it that I would wish to be altered are the following —

Sub-section (*b*) to have the words "for the purposes of his tenancy" added My reason for wishing to see this alteration made, is that I think the ryot should be allowed to do anything to his land that he thinks will add to its productive powers, but that he should not be allowed to constitute himself the judge of other people's requirements.

Sub-section (*e*) to have the words "in accordance with the provisions of this Act" added.

The ryot should be allowed to sub-let under three restrictions. the first is, that he should be allowed to sub-let only for a term of years, the second, that he does not sub-let his lands for a less sum than will cover his land lord's rents; the third, the land he sub-lets must be free of incumbrances.

Sub-sections (*f*) *and* (*g*).—The power to bequeath should not be accorded to him.

"(*g*) His interest in the land shall, if he dies intestate in respect of it, descend in the same manner as any other immoveable property; Provided that, in any case in which, under the law of inheritance to which he is subject, his other property goes to the Crown, his interest in the land shall go to his landlord."

From the wording of sub-section (*g*) it would appear as if it were intended that the power to bequeath should over-ride the ryot's right to inherit, and this I think, contrary to the Hindu law of inheritance. The power to bequeath should not be allowed unless registration of ryots' wills is made compulsory; and I am not sure but that the power of gift in the case of absconding ryots will not be a hardship to the landlord.

Whether the ryot should be allowed the power to transfer or sell his holding has of late been a very disputed point. I myself believe it has now become a demand that cannot well be withheld from the ryots. In the interests of zemindars and traders, it should be legalized and controlled. All over the country we see ryots selling their holdings, mortgaging them for paltry sums. We see them daily being sold up for debt by decrees of Court, and the zemindars powerless to prevent them. We see the ryots compelled to part with their holdings at one-quarter of their proper value, owing to the uncertainty of the purchaser's tenure. We see zemindars selling up their ryots' occupancy-rights under decrees of Court for rents, and still declaring that such sales should be declared illegal.

The landlords' interests have, I think, been amply cared for in the Bill. In the interest of the trader, I think the ryot should be allowed to transfer, subject to incumbrances. In the interests of the ryot, the person in whose name the holding stands should have the sole power to transfer, and some provision should be made for the management of minors' estates.

The most landlords can now claim is, that the law shall be left in its present state; anything more deplorable could not well be conceived.

What they now deny to the ryots as a right, they will soon ask the legislature to accord to the ryot as a favour to themselves.

Section 51 declares landlord's right of pre-emption, and requires of ryot to give one month's notice to landlord prior to sale. Section 54 and sub-section declares landlord's right to purchase in case of gift by ryot.

The ryot should be obliged to state in the notice the terms on which he intends to transfer.

Under sub-section 4, the landlord must declare his intention to purchase within six months from date of gift. It would be better that his right to purchase should run from date of application to register.

Section 56.—"Notwithstanding any contract to the contrary, when the landlord of an occupancy-ryot acquires, under the foregoing section or otherwise, the occupancy-right in any land comprised in the holding, any person thereafter holding the land as a ryot shall have a right of occupancy in respect of it, and, if immediately before the acquisition of the right by the landlord, the rent of the land was a money-rent, shall be entitled to hold at a money-rent fixed in accordance with the provisions of this Act."

There is nothing in this section to prohibit the landlord holding the land himself, and cultivating it by his own servants or with hired labour. If the landlord leases the land to a ryot who already has occupancy-rights on his estate, by all means allow the ryot to whom he makes over the purchased land to acquire occupancy-rights in that land.

But why a ryot who did not previously possess occupancy-rights on the estate should acquire them with the land over made to him I do not see, nor can I understand why the landlord should not be allowed to make his own terms with the imcoming ryot regarding the amount of rent he is to receive for it.

CHAPTER VI.

OF THE RENT PAYABLE BY OCCUPANCY-RYOTS.

A.—Of money-rents generally.

Section 58 says: "A money-rent payable by an occupancy-ryot shall be presumed to be fair and equitable, and shall continue to be paid by him until it is enhanced under this Act, or reduced."

Under this section it would be open to a ryot to repudiate every condition under which he held his lands at a low rate of rent, and yet claim to hold the lands at the former money rental. It would be more just to declare that a ryot shall be presumed to hold his lands on the same terms and under the same conditions that he has previously held them on, until they are changed under the provisions of this Act.

Section 59. (1) "A money-rent payable by an occupancy-ryot may be enhanced by a contract in writing approved of and registered by a Revenue officer appointed by the local Government in this behalf."

Interference with the private affairs of individuals could not go much further than it is proposed to go under the provisions of sections 59 and 61. Better at once declare that the Revenue officers are to make a complete settlement of all estates, and that their will is to be the law.

(2) "A Revenue officer shall not, under this section, approve or register any contract by which a ryot engages to pay a rent more than six annas per rupee greater than that previously payable, or more than one-fifth of the established annual value of the gross produce of the land in staple crops calculated at the price at which ryots sell at harvest time, or any contract, until he has satisfied himself that it is fair and equitable, and that the ryot in entering into it acts as a free agent."

Under section 59 (1) a money-rent payable by an occupancy-ryot may be enhanced when approved of by a Revenue officer. By implication it may also be vetoed. Sub-section (2) positively forbids the Revenue officer to register any lease the rent of which is more than six annas per rupee greater than that previously payable, or more than one-fifth of the estimated average yield in staple crops.

That is to say, if the landlord, claiming his right of pre-emption, recovers possession of any ryoti lands, or purchases the occupancy-rights of any ryot sold up under a decree of Court, he cannot, whatever the market value of that land may be, re-let it on his own terms, but if he lets it at all, he must let it at an increase of only six annas in the rupee.

The lower the rates at which the ryot holds his lands the better price they will fetch at auction. If this section remains law, no landlord can afford to bid against an outsider for land: an outsider can do whatever he likes with the land: the landlord will only receive so much interest on his purchase-money as six annas in the rupee increase on the former rental will represent.

We need not discuss whether the one-fifth share of value of produce allotted to the landlords is sufficient or not, or whether they have a right to claim a larger share; nor is it necessary to discuss here what should be considered a rack-rent, as the Government have declared that the one-fifth proportion is at present only tentative.

Sections 59 and 61 also forbid the Revenue officer approving of any contract until he has satisfied himself that it is fair and equitable, and that the ryot in entering into it acts as a free agent.

The legislature of course have every right to declare that its officers shall satisfy themselves, before registering documents, that all parties to a contract act as free agents; but to do more than this I should hardly think necessary. If the Act allowed the Revenue officers to cancel the agreement, placing the two parties to the contract in the same positions they were previously in, the one keeping his land, the other his money, there would be some show of fairness in the transaction; but to dispossess one party of his land, and allow the other to keep both land and money, goes, I think, a little beyond fair play.

The wording of section 60 might be slightly altered with advantage. It might run—"Except as provided by section 59, or on account of the land being proved by measurement greater than the nominal area of the holding, a money-rent payable by an occupancy-ryot," &c., &c.

B.—Of the preparation of a table of rates and produce, and of suits to enhance money-rents where such table is in force.

The whole chapter is admirable in theory, but will, I am afraid, be found to be unsuited to the genius of the people—in fact, impracticable.

Had the basis of our present assessment of the rents of the country been founded on any given system, there would have been something to work upon; but with a dozen rates current for each class and quality of land in each village, it will be impossible to draw up any table of rates that will satisfy the parties concerned.

That the Government of the day have the right to declare what shall be considered a rack-rent in the future, as it has done in the past, we may at once concede; but, before it can enforce the provisions of this chapter, it must be prepared to remodel the whole rent-system of the country, and be prepared to hear that parties who may suffer by it will have a tangible grievance and claim compensation. Any ryots who may now be paying more than the declared rack-rent of the country have a right to demand that their rates shall be reduced to the present rack-rent without the landlords having any claim to compensation.

Should the rack-rent rate of the country be reduced, to be consistent, all ryots who may be paying a higher rate for their lands would have a right to claim a reduction in rent; but the landlords would have a fair claim to compensation for any loss they might suffer from such reduction. Unless Government are prepared to settle all claims in a fair and liberal spirit, it would be politic to leave the rack-rent limit where it is.

To carry out the provisions of this chapter in their integrity the executive must ride roughshod over the feelings and prejudices of all concerned.

It is now proposed, under the provisions of this chapter, to reduce the rackrent limit to one-fifth of the estimated average annual value of the gross produce in "staple" crops.

The Bill, under section 84 (*c*), leaves it to the Board of Revenue to determine what shall be considered staple crops. Although we may not all agree as to the exact shares into which the produce of the land had to be divided, between landlord and ryot, we are, I think, all agreed that under Native rule, and afterwards under English, the Government of the country was entitled to collect through its zamindars a fixed share of the produce of all lands, first as revenue, afterwards as rent.

This share or portion of the crop the Government of the day claimed as their right, without any reference to the quality or value of such crop; the more valuable the commodity,

the greater its revenue; and, although Government could, before the Permanent Settlement, and did actually in the instance of sugarcane, waive its right to claim an increase in rents on account of the greater value of the commodity, it does not seem to have reserved to itself the right to prohibit zamindars from enhancing rents on that account.

At the Permanent Settlement the Government omitted, as far as I am able to judge, to make any such reservations; in fact, there is nothing to show that it intended to continue the prohibition after a settlement was come to with the zamindars.

Article 46, Regulation VIII of 1793, says: "It is expected that in time the proprietors of land, dependent talukdars and farmers of land and raiyats will find it for their mutual advantage to enter into agreements in every instance for a specific sum, for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit."

The sanads granted to zamindars as late even as 1840 enjoin the issue of pattas to raiyats, and the taking of kabuliyats or counter-agreements from them at money-rents; but they also say that, in a case where the raiyat fails to lodge a kabuliyat, the landlord may claim 22½ seers out of every 40 as his by right.

Regulation IX of 1805 went a step beyond this, and allowed nine-sixteenths of the produce to be collected from all lands three years under cultivation in the Peishwa's territory.

That the legislature of the day intended zamindars to exact the last farthing permitted by law I do not for a moment wish to say; in declaring the landlord's share of the produce to be 22½ seers out of every 40, it only meant to declare that it was to be the rackrent limit; that is to say, when a raiyat positively refused to come to a settlement for his lands at a fair rental,—the rate current in his pargana,—the landlord was allowed to claim his full rights.

As long as the landlord could claim a fixed share of the produce of the land, he would necessarily bring some pressure to bear on the raiyat to grow the most valuable crops, the more so as all special knowledge and care required for their growth, all extra cost, would fall to the share of the raiyat.

No fixed rules were laid down for the assessment of a money-rent; but landlords were urged to come to a money-rent settlement with their raiyats. Money-rents 'were' intended to be, and were, a compromise between the value of the landlord's share of the more valuable commodities and the ordinary cereals of the country: the money-rent per bigha was in most instances greater than what the landlord received from the yield of his bhaoli lands. By fixing a money-rent for the land a zamindar waived his right to dictate to his raiyat the crops he should grow. It was nowhere intended that the landlord's power to enhance should be regulated by the relative value of cereals alone, but by the market-value of all crops grown.

Until one knows what crops the Board of Revenue would consider staple crops, or what rules it would lay down for the guidance of the Revenue officers in order that they may make out a list of staple crops, we can form no opinion as to the extent the zamindars' or raiyats' interests will be affected by the rule: if only cereals are to be accepted as staple crops, many claims for reduction in rents may be made: if all "marketable" commodities are included under "staple," zamindars will have no valid reason to complain if one-fifth or one-fourth of the gross value of crops be declared the rackrent limit. A serious matter such as this is should not be left to the caprice of others. In speeches in Council, in reports of Revenue officers, our landlords are accused of rackrenting their estates and arbitrarily enhancing the rents of their raiyats; the province, in fact, is declared to be already rackrented. I have gone carefully through the speeches in Council, and, when I have had the time, perused the correspondence published with the Bill; but, as well as I am able to remember, little or no attempt has been made to show what is at present a rackrent under the law. In one able speech—and the only one—a rackrent is described as a rent trenching on the actual labour-wage of the cultivator. In another a comparison is made between the value of the crop per head in each province to show that others are better off than we are; but no mention is made of the area of land per head or pressure of population. I think it might be found on enquiry that the value of the produce per acre is greater with us, but that there are more to feed on it. Mr. Finucane, whose reports are largely quoted, enters more fully into the subject. He has taken the relative prices of edible crops now and some forty years ago as the basis of his argument; but he has made the mistake of considering staple crops to consist of cereals only. He has omitted to take the area under opium, potatoes, tobacco, cotton-fibres of sorts, dyes of sorts, turmeric, ginger, sugarcane, oil-seeds, &c., &c., into consideration; and he has failed to take into consideration the extraordinary increase that has taken place in the cultivation of these crops since the Permanent Settlement.

In 1840, Government distributed 37 lakhs of rupees throughout India for opium; in 1881-82, it distributed nearly six times that sum. To make an exact estimate of the value of the gross produce of the country in 1793 and now I presume to be impossible, and, until it is done, all comparisons between the average value of lands at the time of the Permanent Settlement and now must be deceptive. We planters, without any access to figures, can but form our opinions from what we see going on around us; we can but see that the province has made most extraordinary strides in prosperity of late years, and we believe that it was the intention of the legislature that the zamindar should share in it with the raiyat.

Whether nine-sixteenths, half, one-fourth or one-fifth of the produce is to be the rackrent limit in the future remains for the Government to decide, but any limit that does not take under consideration all crops that may be grown will be faulty.

That some raiyats on each estate may be rackrented is not only possible but very probable;

some estates may be in a like condition; but, until we know what is to form the basis of a rackrent limit, it will be impossible to know with certainty to what extent they are so. Some lands may be rackrented at two rupees an acre, whereas lands in their vicinity may be cheap at ten rupees. It is difficult to believe that a district which is able to pay the greater portion of its landlord's rents from the produce of any one crop grown in it is rackrented, and that it requires the drastic remedies people have recommended for it.

Chumparun, which pays its landlords in round figures some 24 lakhs of rupees and has a million and a half acres of land under cultivation, receives from 16 to 18 lakhs of rupees per annum for 70,000 acres under poppy. Shahabad and Gya might meet their landlords' rents from the proceeds of their sugarcane crops alone; the value of the sugar carried by the Gya State Railway from the town of Gya was valued at 37 lakhs for one season.

Tirhoot and Darbhanga might pay their rents from the proceeds of their tobacco crops.

That sudden, arbitrary and excessive enhancement of raiyats' rents are a very great hardship to raiyats is certain, with the evidence placed before us, there can be no doubt that such have taken place; in fact, I have no doubt that we could all give many more instances of such enhancements.

Every effort should be made to put a stop to such practices, but I do not think the measures recommended will be effectual. The fault with most of the measures recommended lies in their punishing the innocent with the guilty. The remedy lies in encouraging landlords to give long leases instead of frightening them into giving short ones, encouraging the interchange of registered documents, instead of prohibiting their issue by making them too costly, above all, we should not hedge round the registration of documents with so many restrictions as to make the act of registration a nuisance and a trial to one's temper. In reference to the Tirhut cases cited, I cannot speak from personal knowledge, I would only say that they seem to me to have occurred on estates where the landlords had previously kept the rents very low, in order to secure a permanent settlement on easy terms from Government, and then jumped the rates; but for all that it was none the less hard on the raiyats to do so.

In reference to the Dooho Sooho case cited, I will only remark that the bigha mentioned is equal to 2½ acres, which would bring the average rental to Rs. 3-1 per acre.

Section 119 we will discuss in its proper order. I will content myself with calling attention to the fact that, under its provisions, the rackrent limit for ordinary raiyats and sub-raiyats is five sixteenths, instead of one-fifth, of the produce.

Of Suits to enhance Money-rents where a Table of Rates and Produce is not in force.

Section 74 (1) says—"The landlord of a holding held at a money-rent by an occupancy-raiyat, and situate in a local area for which a table of rates and produce prepared under the foregoing sections is not in force, may, subject to the provisions of section 78, institute a suit to enhance the rent on one or more of the following grounds, namely:—(1) that the rate of rent paid by the raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity."

Section 156 (*a*) divides "tenants" into classes, and says the class to which he belongs is a tenure-holder, occupancy-raiyat, tenant of a basta holding, ordinary raiyat or under-raiyat." Section 207 (*b*) divides "tenants" into the same classes as the above. Section 74 (1) gives the landlord power to enhance the rent of a "raiyat," provided it is below the prevailing rate payable by his "class," but does not denote what is to constitute a class among raiyats. It is very necessary to declare what is intended to denote a class among raiyats, and, when defining a class, to see that planters do not form a class in themselves. On my part, I object to raiyats paying according to their "classes," they should pay according to the value of their lands.

D.—Rules applicable to suits to enhance money-rents generally.

Section 76 allows no enhancement beyond double the rent previously payable. Section 59 (2) allows only six annas in the rupee enhancement. Section 77 gives the Court power to order progressive enhancement.

Section 77 should hold good, but section 76 should, I think, be struck out. Cases may occur where the landlord's interests would suffer under a hard-and-fast rule as this is, and, so long as the Court has the power to declare progressive enhancement, the raiyat will be protected.

F.—Special rules regarding money-rents payable for pasture lands.

Section 80. (1) "Sections 62 to 79, both inclusive, shall not apply to land fit to be used, or which in accordance with local usage is used, only as pasture; but, when such land is held at a money-rent by an occupancy-raiyat, the landlord may, subject to any contract between the parties, institute a suit to enhance the rent on the ground—

"(*a*) that the rent payable by the raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity; or

I would be very glad to receive any information our friends are able to afford me in reference to the terms on which raiyats and others are allowed to graze their cattle in their respective districts.

The question of cultivator *versus* grazier is a very important one, and becoming more urgent every day, but, whether the question has as yet been sufficiently ventilated to permit of its being authoritatively settled, or whether it is possible to settle it under the provisions of this Rent Bill, I am not sure.

The raiyats of this district, as a rule, pay nothing to the landlord for being allowed to graze their cattle, which they keep for "agricultural" purposes, on the pasture lands, excepting their skins when dead; they usually feed their cattle from the proceeds of their own fields grazing them on any lands lying fallow, or on stubble,

"(*b*) that, having regard to the increase of rent on arable land in the vicinity since the rent payable by the raiyat was fixed, it is reasonable to enhance that rent.

"(2) Where an enhancement is applied for on the ground mentioned in clause (*b*), the Court shall fix the rent at such rate as it thinks fair and equitable."

some few, but very few, and they well-to-do raiyats, lease an acre or two of grass lands from their landlords, which they set aside for their cattle.

The professional grazier, on the contrary, leases no land for his herds, nor is any land specially set aside for his use; he as often looks after herds belonging to other people as he looks after his own.

The land leased to the "raiyat" as grazing ground is usually leased to him at a very low rate, but I have never heard of a raiyat claiming an occupancy-right in that land.

In the civilized portion of the district, the grazier pays a certain amount per head of cattle; on the *dearahs* the same. In the jungles they pay a certain charge per buffalo, and a certain charge is made per "bhuthan," or cattle-shed, for the rest of the cattle in their charge. Many persons, I know, are anxious to see a certain quantity of land set aside in each village as pasture, some even going so far as to think the zamindars should be compelled by law to see that land is set aside for the use of their raiyats' cattle; but I would ask such to tell us how they propose limiting the number of cattle that shall be allowed to graze on it, how they propose preventing the graziers bringing the cattle belonging to outsiders to graze on it, or how they propose preventing a few sturdy *gwalas* from appropriating it to their own use, and dispossessing the people for whom it should be set aside. Many landlords would, I believe, be glad to set aside a portion of their lands for the use of the cattle belonging to *bonâ fide* raiyats and used for agricultural purposes; but the grazier stands in their way.

Numbers of Chumparun herdsmen make a living by pasturing Sarun and Gorakhpur cattle on Chumparun lands.

The Bill, I presume, intends raiyats paying for pasture lands to have a right of occupancy in those lands. I cannot see any hardship in giving rights of occupancy in such lands, but the raiyats ought in all instances to be obliged to pay the same rents for such pasture lands as they do for the rest of their holdings.

If the landlord allows them to hold them at privileged rates, they should not have a right to claim occupancy-rights in them; care should be taken that the rights of the landlord in *purtee* lands are not alienated by the Bill, by turning all *purtee* into "common."

If a raiyat is to be permitted to have occupancy-rights in pasture lands, and to hold them at privileged rates, some provision should be made in the Bill for cases in which the raiyat turns pasture into arable land. Should he forfeit his title to the land, or should the landlord have the right to claim extra rent from him?

G.—Of rents payable in kind, or varying with the crop.

Section 81 and its sub-sections forbid the landlords taking more than one-half the produce as their share of the crop.

Some landlords divide the crop on the threshing-floor. Very many others in North Bihár send out amíns, and have the crops assessed on the fields. The latter proceeding is very lenient to the raiyats, as the raiyats usually manage to get their crops assessed at one-half their value.

On all crops assessed a small percentage is added for the patwárí and gumástáh. If this percentage is declared illegal by the Courts, the consequence will be that all landlords will elect to divide and not assess.

Section 82 allows "commutation of rents."

Sub-section (2) says: "The money-rent shall be fixed at the discretion of the Court—

"(*a*) according to the prevailing money-rent payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity;

"(*b*) according to the average value of the rent actually received by the landlord during the preceding five years"

"(3) When a money-rent is fixed under clause (*b*), a reasonable deduction shall be made by the Court from the average value aforesaid, in consideration of the whole risk of cultivation being taken by the raiyat."

Under this clause all the raiyat has to do is to take little or nothing out of his lands for the next five years to get them for nothing. Not satisfied with running counter to the custom of the province, a deduction is to be made in favour of the raiyat for running a risk the landlord is happy enough to take upon himself.

If this section is to hold good in favour of the raiyat, why should the landlord not be allowed an equal right to have the rent commuted into a money-rent; why should he not be allowed to bring some pressure to bear on the raiyat to cultivate properly?

This section is one-sided.

H.—Supplementary provisions.

Section 84 allows "the Board of Revenue to lay down rules—

"(*a*) for the guidance of officers engaged in the preparation of the tables of rates and produce under this chapter;

"(*b*) for the guidance of officers engaged in the preparation of price-lists under section 83;

"(*c*) for determining what crops shall be deemed to be staple crops for the purposes of this chapter in any local area;

"(*d*) for the guidance of any Revenue officers registering contracts under sections 59 and 61;

"(*e*) for the guidance of Revenue officers and Courts in estimating the average annual value of the gross produce of land for the purposes of sections 59 and 61 and 75, clause (*d*)."

These supplementary provisions place the fate of every man who has anything to do with land in the hands of the members of the Board of Revenue, without appeal. With a stroke of the pen the Board may reduce the rent of a district, by omitting some of the most valuable produce of a district from the list of its staple crops.

If "staple" crops are to regulate the rents of a district, we require some more exact definition of the term.

In the vernacular translation of the Bill, it is translated by the word "*khás*."

The powers allowed to the Board under sections 59 and 61 I objected to in a former memorandum.

The power of the altering the registration-rules as the whim takes them I object to most strongly. The inconvenience we are now put to, by having the rules altered every few weeks, is immense. We should have something definite to work upon.

I am strongly of opinion that the recommendation of the Bihár Rent Committee should be adopted; and the simpler the procedure the better for us all.

CHAPTER VII.

Of the Rights of a settled Raiyat in Bastu Lands.

Section 85. (1) "A person who is under Chapter V a settle raiyat of a village or estate as defined in that chapter, shall, notwithstanding any contract to the contrary, have a right, permanent, heritable and capable of being transferred and bequeathed, in any *bastu* or other homestead land in that village or estate which is not comprised in an occupancy holding, and which is held by him as the site of, or for purpose of, erecting a dwelling-house suitable for himself and his family, together with all necessary out-offices.

(2) "A person having a right under sub-section (1) in any land in a village or estate shall not lose that right merely by reason of his ceasing to be a settled raiyat of that village or estate."

Section 87.—"When a person has, in respect of any land, a right under section 85, and the rent of the land has not been enhanced during the previous ten years, the landlord may, unless barred by any contract between the parties, enhance the rent, so that it may be equal to the rent paid by other tenants for land in the neighbourhood, having similar advantages and used for similar purposes, or, at his option, so that it may be equal to five per cent. of the market-value of the land."

A cultivating raiyat pays us rent for his *bastu* land and cannot transfer it. He is left in possession of it as long as he resides on it, when he leaves it, it lapses to the landlord.

The house he builds on it may be sold up under a decree of Court, but the purchaser is bound to take away the materials with which it is built; the purchaser can only reside in it, or allow it to remain standing, with the consent of the landlord. The cultivating raiyat who has been sold up under a civil Court decree may build another house on the same spot.

The *bastu* lands of cultivating raiyats do not go with their "jotes," and should, therefore, be non-transferable, non-purchasible, without power being allowed the landlords to evict them from them. If the raiyats abandon their land, it should lapse to the landlord; the raiyats should not be charged rent for it, but they should not be allowed to use it for any other purpose than the one for which it is set aside, namely, to reside upon. If the raiyat builds a house and resides on land for which he pays rent, his *bastu* land would then go with his holding. Traders pay for the land they reside on.

In towns where the majority of the residents belong to the non agricultural class, rent is demanded for the land, and the land is to a certain extent transferable.

The purchase-money is usually divided between the tenant and the landlord, the tenant receiving three-fourths, the landlord one *zur chowt*. The Bill deprives the raiyats of a very substantial right.

CHAPTER VIII.

Of Ordinary Raiyats.

Section 89.—"An ordinary raiyat shall, subject to the provisions of section 119, pay such rent as may from time to time be fixed by agreement between him and his landlord."

Section 119 limits the landlord's demand to five-sixteenths of the value of the gross produce in staple crops of all lands leased to raiyats after the 1st March 1883.

I do not object to the rackrent limit here given, but I cannot understand on what principle one-fifth of the

gross produce is to form the rackrent limit of an occupancy-holding and five-sixteenths for that of an ordinary raiyat, or what is to be considered the rackrent when the ordinary raiyat acquires occupancy-rights.

I think, when the landlord in the first instance leases land to a raiyat, he and the raiyat should be allowed to make their own bargain If the landlord afterwards wishes to enhance the raiyat's rents, he should be bound to keep within the rackrent limit whatever it may be.

Section 91.—Notice, of enhancement must be served through the Court—such notice to be served six months before the commencement of the year for which enhancement is to be demanded.

The six months' notice required under section 91 is too long a period; three months are sufficient.

93. (2) "If the defendant does not appear, or if, on appearing, he does not agree to pay the enhanced rent demanded, the Court may pass a decree for his ejectment on condition that, within 15 days from the date of decree, the landlord deposits in court—

"(*a*) such a sum as may be declared by the decree to be payable to the raiyat as compensation for improvements, and

"(*b*) a further sum as compensation for disturbance equal to ten times the yearly increase of rent demanded."

Compensation for improvements and compensation for disturbance I do not approve of.

If the raiyat does not appear to answer for himself in court, I do not quite see how the Court can be in a position to assess the cost of his improvements. If the ordinary raiyat, who holds under a terminable lease, is allowed compensation for improvements and also for disturbance, compensation cannot justly be withheld from sub-raiyats who are ousted from their holdings at the end of their leases.

It would be preferable to reduce the number of years a raiyat must continuously hold land to be constituted an occupancy-raiyat.

I am not sure that it would not be preferable to allow the ordinary raiyat to purchase occupancy-rights of his zamindar, by paying down, say, a couple of years' rental as a bonus.

Why a landlord should be compelled to pay a raiyat compensation for demanding a rent that the Court considers fairly demandable, I do not understand.

Section 95.—"Fresh proceedings not to be taken for ten years."

If this section holds good, the raiyat agreeing to pay the enhanced rent would acquire occupancy-rights at once.

CHAPTER IX.

A.—Of alterations of rent consequent on alterations of the area of the holding of a tenure-holder or occupancy-raiyat.

96. (1) "Notwithstanding anything in Chapter III or VI, every tenure-holder shall, in the absence of a contract to the contrary, and every occupancy-tenant shall, notwithstanding any contract to the contrary,—

"(*a*) be liable to pay additional rent for all land added to the area of his holding by alluvion or otherwise, unless he can show that the land has re-formed on the site of land which was formerly included in that area, and for the loss of which he has had no abatement of rent; and

"(*b*) be entitled to a reduction of rent in respect of any diminution," &c.

By implication this section as it stands allows tenure-holders, raiyats entitled to hold at fixed rates and occupancy-raiyats to claim all alluvion as theirs by right, whether they have suffered by diluvion or not, unless they have previously forfeited their right by receiving abatement in rents for diluvion. Under sub-section (2) of this section, the occupancy-raiyat would pay rent for these lands at the same rate as other occupancy-raiyats pay for lands of a similar description and with similar advantages in the vicinity.

The tenure-holder and the raiyat who holds at fixed rates (who is also a tenure-holder under the Bill) would be entitled to claim a deduction of 30 per cent. on the above rates for risk and cost of collection.

Under clause (*b*) they would be allowed a deduction in rent for all land lost by diluvion.

(2) "The amount added to the rent shall be calculated at the rates payable by occupancy-raiyats for lands of a similar description and with similar advantages in the vicinity, less a deduction in the case of a tenure-holder of thirty per cent. for profits, risk and cost of collection."

Under sub-section (3), "the amount abated from the rents shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of proof of the yearly value of land lost, shall bear to the rent previously payable the same proportion as the diminution of the area lost to the previous area of the holding."

Regulation VIII of 1793, clause 51, implied that zamindars might claim extra rents from tenure-holders for all alluvion. Section 17 of Act X of 1859 and section 18 of Act VIII of 1869 permitted the landlord to demand enhanced rents from his raiyats, provided "the quan-

tity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

Raiyats who lose lands by diluvion should be allowed to claim abatement in rents: where any special rate is payable for the land lost, at that rate; or where a table of rates is in force, at the rates entered in the table of rates; if no special rate is payable for the land lost, at the average of their holding. If they elect to continue paying rent for the land lost by diluvion, they should be entitled to claim the land again when it re-forms by accretion.

But more than this should not be allowed. To allow them to claim all accretions by alluvion is to introduce a very dangerous principle, a fruitful source of litigation. In Bengal and some parts of South Bihár, the land when thrown up may be brought under cultivation at once and be very valuable: in North Bihár it may be useless for years, and in some instances the right to hold some hundreds of acres may be at stake.

If the raiyat is to claim a right to all alluvion, how long is the landlord to await his pleasure before charging him rent for it?

There is nothing to prevent a raiyat claiming all alluvion, only to dispose of it to the highest bidder.

Raiyats holding at fixed rates run no extra risk in collecting their rents; there is, therefore, no reason for allowing them a deduction of 30 per cent.

The law as it at present stands is sufficient protection to the landlords as against encroachment on the part of "raiyats;" it is unwise to afford raiyats further facilities for encroaching on the landlord's rights.

In reference to tenure-holders, other than tenures under section 14, it is necessary to define their rights in alluvion.

C.—Of receipts and accounts to be given to tenants.

Sections 100, 101 and 102.—Section 100 entitles a raiyat to demand a receipt from his landlord, declares what it shall specify, declares the landlord must keep the counterpart of it, declares that any receipt which does not state the particulars required by law shall be an acquittance in full.

Section 101 entitles a raiyat to receive a copy of his yearly account from his landlord

Section 102 and sub-section imposes a penalty on the landlord for not delivering receipts and accounts to his raiyats

Section 100 should have the words "from his duly authorized agent" added.

The landlord will be compelled under the Bill to keep a counterpart of the receipt he gives to the raiyat. One might have some object in view in insisting on the landlord keeping a "counterfoil" of the receipt he gives the raiyat, but none in keeping a counterpart of it only: as evidence it would be valueless.

In the interest of both landlord and raiyat, any one, not duly authorized, found collecting rents from raiyats should be liable to prosecution either on the initiative of the landlord or of the raiyat. Power should be given to the landlord to tender the receipts and accounts to his raiyats through the Courts, and not leave him at the mercy of the raiyat.

If this is not allowed, the raiyat may at any time, whether he has received a receipt or not, put his landlord to great inconvenience by bringing a suit against him. Six months allowed a raiyat is too long a period to allow him, he should be obliged to claim a receipt within a month from the time he paid the money.

D.—Of the deposit of rent by a tenant in a public office.

Sections 103 to 107.—The difference between the procedure laid down in sections 46 and 47 of Act VIII of 1869, and the procedure laid down in sections 103 to 107 of this Bill, lies principally in the power given to the Court to decide to whom the rent deposited is actually due.

I think the Collector should have the power to call upon the raiyat wishing to deposit rent under 103 (*c*) to show from whom he received the land, or under what lease or right he was entitled to pay rent for the land or be in possession of it; otherwise it will be in the power of every raiyat in the country to set neighbouring zamindars quarrelling under section 106.

E.—Arrears of rent taken by division of crops.

Sections 108 to 118.—I would only remark that some limit should be put to the expense landlords and raiyats are to incur when applying to the Courts for assistance as provided under the provisions of these sections.

G.—Further provisions regarding rent.

Section 119 says a raiyat or under-raiyat shall not be bound to pay more than five-sixteenths of the value of the gross produce of his holding in staple crops, notwithstanding any contract made after the second day of March 1883. I do not think it necessary to make this rule applicable to under-raiyats.

Section 120.—"The rent payable by a tenant in any agricultural year shall be presumed to be the rent payable by him in the following agricultural year, until the contrary is shown."

The raiyat should not have the right accorded to him to hold his lands at the same money-rents, ignoring the conditions on which he held the land.

CHAPTER X.

A.—Of improvements on raiyats' holdings and compensation therefor.

I look upon this chapter as quite unnecessary.

A raiyat with a permanent interest in his holding, and a raiyat with occupancy-rights in his holding, can only be ejected from their lands in execution of a decree of a competent Court

passed in accordance with this Act, on the ground that they have used the land in a manner which renders it unfit for the purposes of the tenancy, or that they have broken a condition consistent with the provisions of this Act, and on breach of which they are, under the terms of a written contract between them and their landlord, liable to be ejected (*vide* sections 25 and 50 (*a*)).

The Bill has taken every precaution to secure to the raiyats the proceeds of their labour, by debarring landlords from claiming enhanced rents owing to improvements made at the expense of the raiyats.

A raiyat with occupancy-rights can only be ejected on the above two grounds; if he is ejected by the Court because he renders his holding unfit for the purposes of his tenancy, I cannot imagine under what circumstances he would be entitled to compensation for improvements.

If he is liable to be ejected for breach of contract, as described above, he knows the risk he runs; let him fulfil the conditions of his lease. The law is, I believe, very lenient, and will allow him every opportunity to fulfil such conditions before it enforces the penalty.

The new Agricultural Holdings Bill does not go so far as it is proposed to proceed in this Bill; it makes no mention of compensation to tenants who can claim fixity of tenure, and who make themselves liable to ejectment; it allows the landlord to claim a set-off for waste; and it compels the tenant to return to the fields, in the shape of manure, all straw, &c., the produce of the farm. All that it is necessary to declare is, what may be considered an improvement under the Act, that the landlord and raiyat may know where the boundary lies between improvement and rendering the holding unfit for the purposes of his tenure.

Section 126, clause (3), is, I think, totally wrong in principle. It declares: "A work which benefits several holdings shall, for the purposes of this chapter, be deemed to be, with respect to each of them, an improvement." It is wrong, insomuch that it allows one raiyat to be the judge of other people's requirements. If a raiyat's occupancy-rights are sold up under a decree of Court, it is to be presumed the value of his improvements are taken into consideration by the would-be purchasers.

"If" compensation for disturbance is to be allowed, the tenants of holdings under a certain area should be barred from claiming it. If a precedent is required for this, it is to be found in section 23 of the English Agricultural Holdings Bill. "If" compensation is to be allowed, it should be for improvements made after the passing of the Bill.

"If" compensation is to be allowed to any class of raiyats, it should be allowed to ordinary raiyats, in preference to raiyats with assured tenures: but if it is allowed to ordinary raiyats, it cannot be well withheld from under-raiyats, and an allowance should be made for measures, &c., in preference to compensation for the unseemly holes made all over the country dignified by the name of tanks.

I believe compensation for improvements unsuited to the genius of the people, will be misunderstood by them, and may in time become the means of persecution.

B.—Of the landlord's right to measure land.

Act VIII of 1869, sections 25, 37 and 38, respectively declared the landlord's right to measure his estate; in case of opposition, allowed a competent Court to permit the measurement; and, under certain circumstances, allowed the Courts to order the measurement to be made by their own officers. Act VIII of 1869 was faulty, insomuch that neither landlord nor tenant could apply to the Courts for the appointment of an amín to measure the lands, unless they could first show that a dispute had occurred. The provisions of the new Bill (in many ways an improvement on the former procedure) nowhere distinctly say that the Court may "order" the land to be measured by its own officers. Section 137 (1) only implies that it may be done. Section 135 (1) merely says that the landlord may apply to the Court to direct the tenant to permit the measurement.

Both Act VIII and the new Bill compel the landlord to declare that he has been obstructed in the measurement of the lands, before they will afford him any assistance in the matter.

It would be a great convenience to all parties concerned to allow the landlord to apply to a Revenue officer to have his estate measured, without being first obstructed by his tenants. A landlord cannot always procure a trained amín, and some of the bitterest quarrels between landlords and raiyats are caused by the ignorant men sent out by the landlords to survey their estates.

Under section 133 the landlord is prohibited from measuring his estate oftener than once in ten years: this may in many instances be a great hardship to him, especially in estates bordering on large rivers.

The landlord might be prohibited from having a cadastral survey of his estates carried out under the supervision of a Government officer oftener than once in ten years; but he should be allowed to measure his lands as often as he pleases, or he should be allowed, for any reason which is satisfactory to the Court, to measure individual raiyats' fields; otherwise how is he to check encroachments? I am not sure that this section does not run counter to section 207 (*a*).

Regarding the length of the pole. When the registration of all estates was made under Act VII of 1876, the lengths of the poles used on such estates were recorded. If such record is not sufficient, it might be as well to have the length of the pole used on each estate authoritatively settled once for all.

C.—Of surrender and abandonment.

The right to relinquish his holding at the end of the agricultural year is not among the incidents attached to an occupancy holding under section 50. Every raiyat has a right to

relinquish his holding under section 20 of Act VIII of 1869, always provided he gives his landlord ample notice of his intention to do so. Every raiyat should be allowed to relinquish his holding, provided he relinquishes it as a whole, gives his landlord ample notice of his intention to do so, and provided he does not hold it under a contract.

Care must also be taken to secure the right of pre-emption to people who may have advanced money to the raiyat on the security of his holding.

Abandoned lands the landlord is permitted to re-let as soon as they are abandoned. A raiyat who changes his residence, or goes off like a thief in the dark to avoid his creditors, without giving his landlord notice of his intention to retain his holding, should forfeit it after an absence of three months.

In some parts of Bihár a landlord would find it absolutely impossible to induce people to take up land that had been allowed to run to waste for a twelvemonth.

D.—Of Merger.

This chapter I think a very important and a very necessary one.

I think our interests are amply secured, and see nothing to alter in it.

E.—Of the appointment of a manager on behalf of a co-owner of an estate or tenure.

The provisions of this chapter are very necessary to protect the weak against the strong, but they hardly go far enough.

The Court should not only have the power to manage the estates, but should also have power given it to make a summary and, if I may use the word, a tentative division among shareholders, with power reserved to shareholders to apply within a certain time for a formal "batwara."

The appointment of a manager should not debar shareholders in a managed estate from applying for a "batwara." The proprietors should have power given to them to challenge accounts rendered.

CHAPTER XI.

Of the Settlement of Rents by a Revenue Officer.

Sections 151 to 163 allow the Revenue authorities to settle the jammabandi of an estate or a class of tenants in cases where—

(*a*) a large proportion of the tenants or landlords wish it, and deposit costs;

(*b*) where such an order is calculated to avert a serious dispute;

(*c*) where the settlement of revenue is being made.

Section 163 allows the Local Government to decide on whom the cost of settlement shall fall.

I think it very necessary that the Revenue authorities should have the power here granted them to prevent agrarian disputes, but think the powers should be very sparingly used, and only in cases where the disputes occur between landlords and large bodies of raiyats. Power should be given to the Revenue authorities to measure the estate also. Section 159 says the jammabandi settled is to come into force from the commencement of the agricultural year next following the publication; it says nothing as to the rates raiyats are to pay during the time the estate is under settlement.

The settlement should take effect from the commencement of the dispute, and, when settled, have the force of a decree. Section 151 (2) (*a*) should be an Exception to 163.

CHAPTER XII.

Of the preparation of a Record-of-rights by a Revenue Officer.

The only alteration I would wish to see made in the provisions of this chapter is to require any special conditions under which the raiyat holds his lands entered among the particulars to be specified. If sections 14 and 15 hold good, this chapter should be struck out.

CHAPTER XIII.

Of the Recovery of Rent from Raiyats and Under-raiyats by distraining the Produce of the Holding.

The Statement of Objects and Reasons published with the Bill says:—"This chapter may be said to be the result of a compromise. The Rent Commission, concurring with the Bihár Rent Committee, proposed to abolish the existing law of distraint as an offset of English law, of which the efficacy was impaired by the legislation of 1859, and which had been abused in Bihár, and not always applied in a regular manner in other parts of the country. To this strong objections were urged, and the procedure provided by this chapter was then devised by the Government of Bengal, as being likely to secure to the landlords most of the advantages offered by the existing law, without exposing their tenants to the evils complained of." I am as strongly of opinion as I was at the meeting of the Bankipore Committee, that the power to distrain growing crops should be abolished. I am of opinion that, as long as the power to distrain in any shape remains law, so long will the raiyats submit to its abuses.

If they are once given to understand that it has been finally abolished, the abuses will die a natural death. The raiyats now submit to private distraint, or, more correctly speaking, restraint of their crops, because they believe in its legality.

In the Statement of Objects and Reasons it is stated that the provisions of the Bill are the result of a compromise; but, like most compromises, it will satisfy neither party; it will not satisfy us, who wish to abolish it, as it does not do away with the abuses we complain of; it

will not satisfy the zamindars, as they wish to distrain without suit, claiming such power as inherent in their position. The power here allowed they look upon only as attachment before judgment.

The Honourable Baboo Harbans Sahai, in his letter to the President of the Rent Committee, says:—"It has been declared, from the earliest legislation to the present time, that the produce of the land is hypothecated for the rent, and the zamindar has a legal right to realize his rent by distraining the crop." It is because all zamindars implicitly believe in the correctness of this hypothesis that they abuse their powers. Section 68 of Act VIII of 1869 says the produce of the land is held to be hypothecated for the rent payable in respect thereof. Had it stated that the land itself and all thereon was held hypothecated to any "arrears" of rent, it would have been more correct Possession of the land may be hypothecated to the tents thereof, but standing crops cannot be hypothecated, as zamindars consider them to be, for the simple reason that no Government in the world dare declare that a raiyat must pay his rents before he has been afforded an opportunity of disposing of his crop; as the raiyat is in duty bound to pay his rents from the proceeds of his crops, so he should be allowed to dispose of them before being called upon to pay.

That standing crops should be liable to attachment is right, but only to the same extent as a lodger's goods at home are liable to attachment for his landlord's debts.

If it is declared that the crop is hypothecated to the rents, although it may not be done legally, morally the landlord will be justified in restraining the corps until his rents are paid.

To justify the present procedure, one must be prepared to declare that the future crop is hypothecated to arrears. If it is hypothecated to arrears of rent due, we are not justified in limiting the lien to one year's rent, but to all that may be due.

Under section 68 of Act VIII of 1869, the distraint of standing crops is allowable; but section 71 forbade distraint of stored grain. I cannot conceive any more effectual instrument of persecution than to allow distraint of grain stored in a storehouse, more especially as the power to distrain is to be given to raiyats who have sublet their lands.

CHAPTER XIV.

B.—Rules applicable to particular classes of suits between landlord and tenant.

Section 194 allows the service of a summons on a defendant in any suit for the recovery of rents, &c., which may be served through the post office.

This would, I think, hardly be sufficient in all cases.

Section 201 makes no allowance for the delays of the Courts. If a decree could be obtained quickly, there would not be much harm in this section; but considering a case drags on for months, this will come rather hard on some.

Sub-section (2) is not required.

C.—Suits to determine status, &c., of tenant.

I would like to see the provisions of section 207 and sub-sections somewhat extended.

At present a raiyat has only to deny the relationship of landlord and tenant to compel the proprietor of the estate to enter into a costly suit. He has only to declare that he received the lands from a neighbour to force two neighbouring proprietors to enter into a suit.

If the law would allow the landlord to sue for the determination of the status of any person in possession of his land, leave alone a "tenant," or to be allowed to have the boundaries of his estate defined, it would be an advantage and save much litigation.

CHAPTER XV.

OF THE SALE OF TRANSFERABLE HOLDINGS IN EXECUTION OF DECREES FOR ARREARS DUE ON THEM.

Section 208 (1) says—"'Incumbrance' in this chapter, used with reference to a tenancy, means any lien, sub-tenancy, easement, or other right or interest created upon the holding by the tenant in limitation of his own interest therein except—

"(*a*) a tenure existing from the time of the Permanent Settlement;

"(*b*) a tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

"(*c*) a tenure of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, tanks, canals, places of worship or burning or burying-grounds have been made;

Had the word "tenure" been used instead of "tenancy," I could have understood the purport of this section.

I should then have understood that it was necessary to prevent tenancies created or acquired within a tenure from being considered encumbrances on that tenure; but why should it be necessary to declare that an occupancy-right, which in itself is a tenancy, shall not be an encumbrance on a tenancy?

" (*d*) a right of occupancy ;

" (*e*) a right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and

" (*f*) any right or interest which the landlord has expressly, and in writing, given the tenant permission to create."

Section 209 (1) says—" When a decree has been passed for an arrear of rent due for a transferable holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the holding in execution of the decree, his application shall contain, in addition to the particulars specified in that section and section 237 of the said Code, a statement of the annual rent of the holding."

Section 210 (1) says—" When an order has been passed for the sale of a holding upon an application made under section 209, the proclamation made under section 287 of the Code of Civil Procedure shall, in addition to stating and specifying the particulars mentioned in that section, announce—

" (*a*) in the case of a tenure, that the tenure will be sold subject to the registered encumbrances, and will be sold subject to those encumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

" (*b*) in the case of an occupancy-holding or bastu-holding, that the holding will be sold with power to annul all incumbrances."

Section 216.—" Rule for disposal of sale-proceeds."

This is hardly sufficient. The sale taking place at the instance of the landlord, should state for what " term " the current rate is to hold good.

A purchaser might find that he had paid a high price for a holding at a low rental, only to be a defendant in a suit for enhancement afterwards.

When the sale takes place at the instance of the proprietor, it should be for a term certain, if at the instance of an ijaradar, for the term of his, the ijaradar's, lease unless the raiyat whose holding is sold has acquired a right to hold for a longer period, when it should be for the full period of his tenancy.

In reference to tenures under this section I have nothing to object to, but, as regards the sale of occupancy-rights, I think it should be compulsory on the landlord to enforce his decree by selling up the whole of the holdings, and not only a portion of it, as I believe the law now permits.

Occupancy-rights should be sold subject to their encumbrances in the same way as tenures are to be. Section 215 certainly allows the Local Government to declare that occupancy-rights in any given local area shall be sold subject to registered encumbrances; but it is not sufficient. It will paralyze all trade, by making all trade too venturesome to be entered into excepting at exorbitant rates of interest. If occupancy-rights are not to be sold subject to registered encumbrances, it is absolutely necessary that notice of sale should be issued on all mortgagees, to permit of their purchasing under section 213, or to protect their interests as they deem right, and not to sell up the holding unknown to them.

In disposing of the proceeds of the sale of a holding free from encumbrances, no mention is made of the poor mortgagees; the proceeds are to be divided between the decree-holder and judgment-debtor, only allowing the mortgagees two months to sue and recover from balance of proceeds in hand.

Section 217 allows the judgment-debtor to pay up the amount of decree with costs, any time before the sale takes place. More than half the property sold in this country under decrees of Court is sold at one-quarter of its value, owing to the uncertainty which would-be purchasers are in as to whether the sale will really take place or not.

The Court might give the raiyat as much time as it thinks necessary to pay up : the sale should be advertised for a date subsequent to the date allowed for payment; but when the date allowed is passed, the sale should be compulsory.

Section 218 (1).—"Amount paid into court to prevent sale to be in certain cases a mortgage-debt on the holding."

By " holding " I presume an occupancy-holding is meant.

Under this section, a person paying the amount due into court would hold the first mortgage on the land; but who would have a right to redeem it? Would the raiyat be allowed to do so, or only other and prior mortgagees under a suit?

What time would other mortgagees be allowed within which to sue?

As the clause stands, I am inclined to think they may choose their own time to do so, or under section 148, schedule II of the Limitation Act, 60 years. Would voidable encumbrances take precedence of registered ones under this section?

Then, again, the question arises, would the landlord again have the power to exercise his right of pre-emption under section 53?

CHAPTER XVI.

Of Limitation.

The present Bill is in so much different from Act VIII of 1869, that the time from which the period of limitation is to run is mostly mentioned in the clauses likely to be affected, whereas Act VIII of 1869 refers to them under clauses 27, 28, 29 and 30.

I presume grounds of action not specially provided for under the Bill would be governed by the law of limitation, Act XV of 1877, such as a suit against an agent, &c., which was provided for under Act VIII by section 30.

CHAPTER XVII.

A supplementary chapter to regulate the acts of the Executive does not concern us to any extent.

Schedules II and III permit summary sale of patní tenures.

When criticising the provisions of Chapter IV, I said I was of opinion that the procedure laid down in reference to patní tenures should be extended to all permanent tenures other than raiyatí tenures referred to in sections 14 and 15.

If it is necessary to permit zemíndárs to recover the rents due to them on patní tenures by a summary process, it is equally necessary to allow them to recover rents due to them on all permanent tenures under the same procedure. There is no valid reason for allowing them to recover rents on all tenures created by themselves after the Permanent Settlement, and withholding permission from them to collect the rents due to them on tenures created at the time of and before the Permanent Settlement, and on which they receive a fixed sum as malikána in perpetuity. There is nothing in the wording of this chapter, or in the definition given of a "patní tenure," to permit of this. All over Bihár we have such tenures; tenures created before or at the time of the Permanent Settlement, known as "Bhek-Birt," "Shikami tenures," "Juglis," "Ultumgha," &c., &c., the revenue for which is paid by the zemíndár to Government, and the rents of which the zemíndár has the greatest difficulty in collecting from the tenure-holders. If such tenures are to be brought under the provisions of these schedules, some of their sections will require to be modified.

Section 11 would be very rough on men who have advanced large sums on the security of such property, and who may not be rich enough to buy it in.

No facilities are afforded the landlord under the Bill of collecting Government taxes, such as road-cess, &c., from tenure-holders.

As the landlord is the tax-collector, and has to collect the taxes from tenure-holders and lákhiájdárs, some facilities should be afforded him to do so.

MEMORANDUM.

Regarding all the legislature wishes to enact under the Bill, I have said all I wished to say; but I think it will not be out of place to mention here that, however just and estimable the provisions of the Bill may be, its effects will be perfectly nugatory as long as the cost of obeying its behests is prohibitory.

To say that we "must" and "shall" do such and such work is not sufficient; it must be made "possible" for us to do it.

Under the proposed Bill, it is laid down that landlords shall keep, and also deliver, most eleborate accounts; but, unless the question of patwáris' accounts is thoroughly gone into and Regulation XII of 1817 is revised, it will be impossible for them to do so.

It is intended under the Bill that the registration of documents should be more generally resorted to; but, unless the act of registration is made less irksome and the fees less onerous, neither landlord nor raiyat can afford the time or the money to obey the law. It is intended that landlords who wish to recover what is due to them should desist from resorting to illegal means of recovering their rents, should desist from bringing illegal pressure to bear on their raiyats, and that they should in all instances where the raiyats fail to pay their rents resort to law to recover them; but nothing is done to encourage them to do so. The cost of recovering rents through the Courts is ruinous.

Whether it is intended to revise the Court-fees Act hereafter I do not know; but, unless something is done, either by following the suggestions of the Bihár Committee, or by resorting to other and more certain measures, landlords are bound to evade the law by every means in their power.

The smaller the amount of rent due, the greater the comparative cost of a suit. The cost of a suit is becoming greater every day instead of less. It has lately been discovered that, to enforce a decree against a raiyat, two rupees *tulbana* must be paid on each separate field; that is to say, if the landlord has a decree for ten rupees, and the raiyat's holding is divided into ten fields, he must pay twenty rupees *tulbana* to enforce it.

T. M. GIBBON.

Memorial of the Landholders of East Bengal to His Excellency the Viceroy and Governor-General of India, with Notes on the Bengal Tenancy Bill, 1883.

The humble memorial of the Landholders of East Bengal.

MOST RESPECTFULLY SHEWETH—That your humble memoralists are filled with great alarm at the introduction into the Imperial Council of a Bill entitled the Bengal Tenancy Bill, the

provisions of which will tend to upset the present relations between landlord and tenant in Bengal, to redistribute property in land on an unfair basis, and will foster dispute and litigation to the prejudice of the interests of both classes.

2. It was in June 1875 that the zemindars of East Bengal, to their misfortune be it said, sent a petition to the then Lieutenant-Governor, Sir Richard Temple, asking for greater facilities in the realisation of arears of rent, the present law having practically been found very tedious and expensive. The petitioners stated that "it is not unknown to Your Honour that the punctual payment of the Government revenue of an estate depends almost entirely on the punctual payment of the rents of the *mehal* by the tenants thereof. That suits for arrears of rent are very expensive, and that it is almost impossible to realise by suits the rents of a *mehal*, where the ryots combine against the zemindars as they often do, and when in consequence a very large number of suits has to be instituted. That even where a decree is obtained for arrears due, the zemindar very often does not obtain the whole of the actual costs of the litigation, and that the low rates of interest allowed on decrees are by no means calculated to induce the ryots to satisfy the decrees at once. That leaving out of consideration for the present the question of enhancement, your petitioners submit that there are enormous difficulties in the way of their realising arrears of rent at even existing rates. That the right of occupancy created by Act X of 1859 is now-a-days claimed by the great majority of ryots, and that it appears to Your Honour's petitioners that a stringent law for the absolute forfeiture of the right of occupancy on non-payment of arrears of rent either on the due date or at the latest on the fifteenth day before the last day of the next payment of the Government revenue will, to a great extent, help the zemindar in realising his rent and paying the Government revenue in time. That distraint of crops and suits in courts are the only remedies provided by the law for the realisation of arrear of rent That distraint is naturally disliked by the ryots, and that owing to the vexation which it entails upon the distrainor and considering the liability to be sued for damages, zemindars very seldom have recourse to this mode of recovering rents."

3. This prayer was rejected by Sir Richard Temple, but he said that "in the event of legislation being contemplated on a future occasion, he has little doubt that the arguments now submitted will receive proper consideration." A few months after this Sir Richard Temple recorded a minute on the 18th April 1876 on the question of determination of rent But his sliding scale of adjustment of rents was rejected both by officials and non-officials as quite impracticable. The Agrarian Disputes Act was passed on the 21st April 1876 and received the assent of the Governor General on the 10th July following. Sir Richard Temple again recorded two minutes, one on the 15th May and the other on the 29th August 1876, and in this later minute the question of the transfer of the occupancy right by private agreement is brought forward for the first time. The Government of India disallowed this proposal in the following terms in October 1876 :—"With regard to the expediency of rendering the right and interest of an occupancy ryot liable to sale for default and transferable by private agreement, I am desired to state that the President in Council entertains considerable doubts. The absence of restrictions on the liability and the transfer of land which prevails in many provinces of India has been alleged by numerous authorities, whose opinions are entitled to great weight, to have been an efficient agent in the impoverishment of the ryot and the transfer of the ownership of land to classes not likely to be good landlords as regards either their own tenants or the State. The Select Committee on the Civil Procedure Code also, in a report presented to the Council of His Excellency the Governor General for making Laws and Regulations, on the 21st ultimo, have recommended considerable restrictions on the sale of land by Civil Courts in execution of decrees. Under these circumstances, it appears very questionable whether it is *politically expedient* to afford any additional facilities for displacing the existing occupants of land."

4. After the collapse of the measure proposed by Sir Richard Temple, there seems to have been a suspension of legislative activity in the matter of the Law of Landlord and Tenant in Bengal. But the difficulties of zemindars in the matter of realisation of rents were so great that Mr. Reynolds, Secretary to the Government of Bengal, in his letter dated April 1877 thus brought the matter for the reconsideration of the Government of India :—"The replies which have been received to the circular in which this Government invited an expression of opinion on the Bill, sufficiently show that under the present procedure, the recovery of rent by legal process, even when the arrear is not disputed, is so tedious and costly as practically, in many cases, to involve a *denial of justice*. If the ryots of a village combine to offer a passive resistance to the landlord by withholding all payment of rent, he can only realise his dues by a suit in the Civil Court against each individual cultivator. It is the object of the ryots to delay a final decision as long as possible and the procedure of a civil suit affords them many facilities for doing so. In the meantime the zemindar, though thus kept out of his own dues, is compelled to pay the Government revenue on pain of losing his estate, and under the pressure thus put upon him, he is sometimes obliged to accede to the demands of the ryots and to forego claims which he would have been able to establish under a more expeditious legal procedure, or he is forced to borrow money at ruinous rates of interest to enable him to meet the Government demand."

5. Mr. Mackenzie thus expressed himself in the Bengal Council four and a half years ago :—"The law's delays are, we know, proverbial, but the delays of a Bengal rent suit in a Bengal Moonsiff's court are more than even proverbial philosophy can make palatable. Notwithstanding the fact that in about 75 per cent. of the suits for arrears of rent the claim is not really contested, the zemindars and other rent receivers have too often found themselves unable to recover their just dues without submitting to a process which entails costs that they may

possibly never recover, and delays that are frequently embarrassing and ruinous, and even when the zemindar has got his decree, it by no means follows that he has got his rent.

"The zemindars are on their part not merely not unwilling but anxious to have this portion of their case taken into separate and final consideration. The Road Cess and Public Works Cess Acts have thrown upon them the responsibility of collecting with their rents and paying into the treasuries all that portion of this fresh local and provincial taxation which falls upon under-tenants of every degree. If they cannot recover this easily and effectually from their tenants, they must under penalty pay the amount themselves—a position which the State *is obviously bound to render* as little burdensome as possible. The Lieutenant-Governor therefore, as he has informed us immediately on his assumption of office, and in accordance with the last views of his predecessor, pressed upon the Government of India the necessity of early legislation to facilitate the early recovery of undisputed rents and to improve the law for execution of decrees in rent cases."

6. After alluding to the many special powers granted to the Zemindars by the old Regulations (notably Reg. VII. of 1799 and V. of 1812) for easier realization of rents, Mr. Mackenzie thus noticed the gradual curtailment of those powers and the change of sympathy of Government from the Zemindars to the ryots:—"In 1859 the legislative pendulum swung quite to the opposite extreme. Summary arrests of defaulters were forbidden. Distraint was so fenced in with difficulties as to become quite impracticable. Zemindars were prohibited from compelling the attendance of their tenants to settle accounts or pay their rents, and both parties were relegated to formal suits in the Courts, at first in that of the Collector and since 1869 in that of the Civil Judge. It was the opinion of many competent Judges, even at the time that this re-action *was too violent*, that sufficient consideration was not given to the difficulties of the Zemindar's position; that the character of the ryot, say, for instance in Backergunge, is not by any means so "child-like and bland" as to warrant the confidence which the law places in his anxiety to pay his rent as it falls due. As I explained to the Council before, the difficulties of the landlords have *become greater year by year*, while the pressure put upon them by Government has *become heavier*, and they stand now urgently in need of assistance from the Legislature."

Mr. Reynolds in his letter alluded to before thus concluded his observations on the subject:—"While Mr. Eden is not prepared at present to take up the question of defining the principles upon which rents should be enhanced, he is quite satisfied that something must be done without delay to improve the system under which the Zemindars can now legally recover their rents. Complaints have reached him from every part of the country of the difficulty and delay which exist under the present procedure, and both officials and non-officials are agreed that the system requires an immediate reform.

"In the two Bills now before the Bengal Legislative Council, the Bill for the levy of a cess for Provincial Public Works, and the Bill for the levy of a rate upon Irrigation Lands, it is proposed to collect the rates through the Agency of the Zemindars in the same manner as the road cess is collected at present. But it is clear to the Lieutenant-Governor that, if responsibilities of this kind are thrown upon the landlords, the Government is *bound in equity* to give them corresponding facilities for realising the amounts which they are entitled to recover from the ryots."

7. The above extracts will make at least two points clear; (1) that it was the difficulty about the realization of rent that the Zemindars asked to have remedied, and (2) that the Governments of Sir Richard Temple and Sir Ashley Eden thoroughly appreciated the difficulties of Zemindars and were anxious to have the law so amended as to remove all cause of complaint on that score. Section 9 of the Bill framed in 1876 and section 4 of that framed in 1879 provided that the amount sued for should be deposited in Court before the tenant would be allowed to put in his defence. This salutary provision has disappeared from all Bills that have been drafted since, for reasons not known to your memorialists. If the Government really believes that the difficulties of Zemindars "have become greater year by year" and if the Government is convinced that it is "bound in equity" to give them the necessary help, it is plain that the first step at legislation should be to remedy an evil that is unequivocally pronounced to exist with such dire consequence to the Zemindars. But nothing has been done in the present Bill to help the Zemindars in realizing their rents. On the contrary, it contains provisions of such a one-sided nature as to deprive them of their most cherished rights and thus by weakening their position, gradually pave the way for their extinction as a class. The provisions regarding khamar lands, the arbitrary extention of the right of occupancy, the right of transferring the occupancy tenure without the consent of the landlord, the restriction on freedom of contract, the provisions regarding compensation to ordinary ryots, the fixing of the maximum amount of rent at one-fifth of the gross produce, the provisions regarding the appointment of a manager by the District Judge and other provisions of a similar nature, too numerous to detail here, are all intended for the good of the ryot, and offer not only no advantage to the landlord but are calculated to throw enormous difficulties at every step in his dealings with his tenantry. The ryot under the proposed Bill could, if he chose, make the Courts the medium of his communication with the person designated in the Bill as his landlord, but the latter will no longer occupy the same position as in the past. The effect of these provisions becoming law would be (by giving a wide scope to litigation) to diminish the profits of the landlord, and hence the value of landed property. And with the rigorous sun-set law hanging over their heads and the tenantry in an attitude of defiance, it is not too much to say that utter ruination will stare the zemindars in the face. Your humble memorialists are loath to believe that the righteous British Govern-

ment would sanction a one-sided, narrow, and unjust measure of this kind. It would virtually bring on the abolition of a class of Her Majesty's subjects who have invested money in land relying on the faith of the British Government and who sincerely believe that interference with their rights in the manner proposed would be a direct infringement of vested interests as guaranteed by the Permanent Settlement.

8. As regards the necessity for a radical and complete change in the law of Landlord and Tenant, your humble memorialists beg to observe that the present state of the country is not such as to justify the enactment of a measure like this. In Bengal (especially Eastern Bengal) the ryot is strong enough to hold his own against the strongest Zemindar. The advocates of the Bill admit this. Spread of education and enlightenment and the progressive nature of the times have infused a spirit of independence and self-reliance among the Bengal tenantry, quite unknown a quarter of a century back, and as time goes on this will spread. They are perfectly alive to their rights and interests and occasionally assert them in a way which places the landlord completely at their mercy. Sir Ashley Eden after his first tour in the Eastern districts was able to testify to the prosperous condition of the peasantry in clear and unmistakeable language. It is well known that the occupancy right is enjoyed by the great majority of the ryots. If statistics were called for, it would be found that at least 90 per cent of the ryots possess that right, and the Zemindars have never in this part of the country objected to this right being acquired under the 12 years' rule, or shifted them from one plot to another with a view to prevent the acquisition of the right. The ryots are therefore quite secure from unnecessary eviction at the will of the landlord. Enhancement also takes place slowly and by mutual agreement. The difficulty of realization has already been dwelt upon before and it is a well-known fact that the Government, with its immense prestige, cannot realize the full extent of the jumma in Government estates even with the aid of a summary law. Thus whether for enhancement or realization of rent if the disadvantage is on the side of the Zemindar, your humble memorialists fail to see what justification there is for still further intensifying those difficulties, and reducing his status by a complete and radical change in the law calculated to excite the worst passions, foster litigation, and set one class against the other.

9. A detailed criticism of the provisions of the Bill is appended to this for the consideration of your Excellency in Council.

And your memorialists as in duty bound will ever pray.

Notes on the Bengal Tenancy Bill, 1883.

Section 3, clause 2.—It is doubtful whether the word "owning" would include trustees and persons having a life interest only in the property, as well as *mutwallies* of *wakf* properties and *shebaits* of *debatter* estates.

Section 3, clauses 5 and 8.—The definitions of "raiyat" and "tenant" will bring in confusion. In a country where the masses of the people are uneducated and ignorant, these fine distinctions will often cause confusion, as by the careless use of the word raiyat in any proceeding the landlord will be taken as having admitted a tenant to be holding agricultural lands, though the person so designated may not have held any such lands at all. The definition of the word "tenant" is also faulty inasmuch as it does not show who, other than a tenure-holder, raiyat, under-raiyat or the tenant of a basti holding, can be said to be a tenant.

If the distinction between a raiyat and a tenant is at all to be preserved, then the definition of raiyat might be advatageously changed to the following effect: A person shall be deemed to be a raiyat who holds land for the purpose of agriculture, horticulture or pasture, either on an express or implied agreement to pay rent.

Section 3, clause 6.—This will encourage unrestricted and unlimited sub-letting. The word "mediately" should be omitted.

Section 3, clause 16.—Transfer should not include mortgage.

Section 3, clause 19.—Does the word "stamped" include "sealed"?

Section 4.—The insertion of the words "not inconsistent with" in clause (*a*) has given such an amount of vagueness and indefiniteness to the section, that it would be a fruitful source of litigation and confusion. The illustration in this section is so far suggestive that it will encourage under-raiyats to set up false claims, as well as create another class of occupancy-right holders.

CHAPTER II.

This refers to *khamar* lands. Too much importance has been attached to this class of lands. Large zemindars seldom have *khamar* or *nij jote* lands, and it is only small landholders or talookdars who keep such lands for their own maintenance. The provisions relating to the survey and registry of these lands are based on the fear that landholders will gradually absorb and convert *rayati* lands into *khamar*, but this fear is perfectly baseless—at least so far as Bengal is concerned. The provisions of this chapter will entail a good deal of expense and trouble while they will serve no useful purpose. Why should the proprietor have to prove 12 years' continuous occupation? If any landholders have made new khamar, say, five years before the passing of the Act, will he be deprived of those lands? This is surely very unjust.

Section 15.—The presumption that when the rent of a tenant has not been changed for 20 years, it must be taken for granted that the land has been held at that rate since the permanent settlement of 1793, is injurious to the interests of landlords. There are many estates in which the owners are minors or women, who have treated their tenants leniently, and have never attempted to enhance the rents of their tenants, or who, from sheer neglect, have allowed

the same rents to run on for 20 years or more. The interests of such persons will be very seriously affected by this provision. On the other hand, those landlords who have been frequently enhancing their rents will not be so affected. This seems very unjust and unreasonable. This provision is also very prejudicial to the interests of auction-purchasers who are often unable to get possession of the zemindari papers of their predecessors. Mr. Reynolds remarks that "as there is reason to think that rent receipts have been much more regularly given and much more regularly preserved during the last 20 years than during the 20 years which preceded them, it seems to follow that the lapse of time has made it more and more easy to raise the presumption and more and more difficult to rebut it." Since the passing of Act X of 1859 the tenants have been quite alive to their own interests and do everything in their power to protect the many valuable privileges which that Act conferred on them. Hence it is much easier now to prove uniformity of payment for 20 years than it was when the Act was passed. It is therefore urged that if in future such presumption should be raised, the tenant should prove uniform payment for at least 40 years immediately before the commencement of the suit, and not any 20 years which may suit his own convenience.

Section 20.—This is probably intended to apply to Government estates. Why should not ryots in Government estates be in the same position as the ryots of private land-owners.

Section 28.—The relief contemplated by this section might easily be obtained by application to the zemindar. Why then should the ryot have power to apply direct to a revenue officer? If the landlord refuses to register such transfers, then the tenant may apply to the civil court as provided for in section 32.

Sections 45 and 47.—These two sections will confer the right of occupancy on all classes of ryots, without any distinction whatever in the territories under the control of the Lieutenant-Governor of Bengal. The occupancy right will then be "the rule and not the exception" as desired by Sir Ashley Eden. It is well known to Government that 90 per cent. of the ryots of the present day possess that right They have acquired this right under the operation of the present law, and no land-holder ever thinks of attempting to deprive his ryots of this right. Why should then the Government confer that right in a peculiar way against the wishes of the zemindars when the latter affirm that they have never objected to the right being acquired under the 12 years' rule? It will not now be necessary to hold the same piece of land for 12 years, nor will it be required of him to hold one piece of land for 12 years in the same village. If a ryot holds one piece of land or several pieces of land at different periods in the same estate for 12 years (an estate may have 100 villages in it), then he will acquire the right of occupancy in all the lands held by him on the 12th year. For instance, an estate called *A* in the district of Dacca has lands which are within the boundary of the district of Furreedpur or Barisal If the ryot holds a piece of land belonging to *A* for 12 years in Barisal, then he acquires a right of occupancy in all lands held by him in estate *A* in the district of Dacca, though he may have held those lands for six months only; or he need not even hold an identical piece of land in Barisal for 12 years, he may have held 10 pieces of land within that time in Barisal, but on the 12th year he will acquire the right of occupancy in all lands held by him in the 100 villages of estate *A* in the district of Dacca. Then, again, there may be several estates owned by different owners in the same village. By this provision the ryot of one estate is virtually a settled ryot in respect of the others, though he may not have held any land in any of the other estates. Because the ryot holds land in the same village, therefore he has a right to be deemed a settled ryot in respect of all estates in the village. This may be somewhat in keeping with the spirit of the Regulations which respected the rights of khoodkasht kudmee or resident ryots of the village only. But the khoodkasht ryots of one village were the paikashts of another, though included in the same estate. But the present Bill goes far ahead of the Permanent Settlement Regulations and gives the right of being deemed a settled ryot to any one holding land in the same estate which may have hundreds of villages in it. Is this not going too far? The definition should therefore be changed as follows:—"Every person who for a period of 12 years, whether before or after the commencement of this Act, has continuously held as a raiyat raiyati land situate in a village when it appertains to a single estate, or raiyati land in an estate when there are more estates than one holding interests in the same village, shall be deemed," &c. This will also do away with the necessity for retaining clause (*b*) of section 43 which is very wide in its significance. The word "village" should also be more accurately defined. The boundaries of *Thak* or survey maps of most of the villages as surveyed in 1853 are very different from their present boundaries, partly on account of diluvion or alluvion, partly on account of the encroachment of neighbouring villages, or partly on account of (in many cases) voluntary concessions and agreements entered into between neighbouring landlords since the last survey. It may often be that part of the area included in an old survey map is now a part of a different village and estate altogether. How will such cases be dealt with? The definition in section 45 is certainly a very broad one, which not even the blindest supporter of the cause of ryot's rights ever dreamt of having. The pesent law of 12 years' continuous possession of the same piece of land piece of land has been declared by the highest legal authorities to be an invasion of the proprietary rights of landlords as guaranteed by the Permanent Settlement. Sir Barnes Peacock, the late Chief Justice of the Calcutta High Court, remarked that "it interferes with the just rights of the zemindars, at least in the permanently-settled estates by vesting rights of occupancy in ryots who had no previous existence." Sir Richard Garth says:—"The term of 12 years, which was fixed by the Act of 1859 as necessary to confer the right, was about the shortest period of prescription known to the law. I believe it will be found that in no country in the world can

a prescriptive title be gained in any shorter period." Then again, regarding the contention made by those who advocate the cause of the ryots, that the ryots in many parts of the country acquire the right according to custom and not under Act X of 1859, Sir Richard Garth says:—"If there did in fact exist now, or if there had existed in 1859, any customary right to land by which ryots could have proved a permanent title by an enjoyment of less than 12 years, the civil courts would surely have heard of it long before this." Such are the views of high legal authorities on this vexed question, and the opinions of many more Judges of the High Court could be quoted to the same effect. Apart from the question of the legality of the provision, it may be said that the 12 years' rule is not injurious to the ryots, and that there is no necessity or justification whatever for changing the law in this respect—at least in Bengal.

Section 46.—*Vide* remarks on chapter VII.

Section 49.—This section is also very objectionable. Section 13 provides that no land other than that for which a register has been kept shall become *khamar* land. This absolutely puts a stop to any increase in *khamar* lands in future. But section 49 provides that the occupancy right might be acquired even in *khamar* lands by 12 years' possession. The zemindar will thus suffer double loss—on the one hand he will be deprived of the right of retaining as much land as he may require for his own use, and on the other, his *khamar* land will also be acquired by his ryots gradually, so that if a zemindar wishes to extend his family residence, make a garden or a new house, he will be entirely at the mercy of the tenant.

Section 50.—This section confers on the occupancy ryot the right, along with other rights, of transferring the holding by sale, gift or otherwise, without the consent of the landlord. The zemindars of East Bengal have in their memorials to Government (on the Rent Question) in previous years always objected to this clause as detrimental to the interests of both landlord and tenant. The provision would tend to transfer the tenant right from *bonâfide* cultivators to money-lenders or other non-cultivating classes. The right of transfer will defeat the very object with which the right of occupancy was created. As the Legislature cannot fix a limit to the rate of interest payable by ryots on amounts borrowed by them, nothing will prevent the mahajans from extorting any rate of interest that may suit their convenience. And in a short time the amount will be doubled or quadrupled, and the poor ryot will be sold out and converted into a day-labourer for tilling the very land which the other day he called his own. The full benefit of this measure, though intended for the good of the actual cultivator, will be reaped by a third party who cannot lay any claim to that right, and who does not deserve any consideration at the hands of the zemindar. The Government of India objected to this in 1876, but Sir Ashley Eden, in asking the Government of India to reconsider its decision, said: "There appears no ground for apprehending that this measure would have the effect of transferring the land to classes whose ownership it might not be thought desirable to encourage. It is probable that in most cases the right would be purchased by ryots of the same class and position as the former tenant. The occupancy ryot is, by the nature and terms of his holding, a resident cultivator, and to render his tenure saleable would involve nothing more than the possibility of its transfer from one resident cultivator to another." It is clear that the whole of Sir Ashley Eden's contention falls to the ground if it can be shown that in places where the right of transfer has been given, the tenure has passed from *bonâfide* cultivators to money-lenders or other non-cultivating classes. Sir Ashley Eden thinks "it is probable that the right would be purchased by ryots of the same class," but is this borne out by facts? On the contrary, the experience that has been gained in Bengal and in other Provinces of India entirely falsifies the expectation on which the late Lieutenant-Governor based his theory. The Hon'ble Raja Siva Prosad in his speech in the Imperial Council in March last laid special stress on this point, and illustrated it by the case of one of his estates the tenants of which had simply been ruined. Then, again, if the occupancy ryot is by the "nature and terms of his holding, a resident cultivator," why does the present Bill give the right to one who is non-resident? Is the present measure in keeping with the original proposal of Sir Ashley Eden? If not, how wide it is of the first inception of the idea? It is said that the great advantage to the ryot will be that it will enable him to raise loans on easier terms. But even on this point opinions differ very much among those who have experience of the state of things in the mofussil. But granting, however, that such is likely to be the case, a loan on easier terms could be raised only by the hypothecation of the holding to the mahajan. It is unreasonable to accept the theory on which the justification of the measure is founded, *viz.*, that the money so raised would be spent in improving the condition of the land from which he could be sold out at any moment. The zemindar's interest in the land is much more permanent and unalienable than that of the ryot, even were the right of transfer conferred on the latter. An occupancy ryot can throw up his holding at any moment, if it does not prove profitable to him, but the zemindar's interest is permanent. Hence the zemindar is not only directly interested in keeping his estate in an efficient condition, but he alone is capable of incurring the outlay necessary for such improvements. When artificial means are employed to improve the condition of an estate, it is not plots of ground but large tracts that have to be dealt with. And large sums are often necessary to bring the works to a successful completion. It is therefore unreasonable to expect that the ryot will take on himself the work which he has not the means to undertake, and which legitimately belongs to the zemindar. It is said that the sale of a tenure would facilitate the realisation of rent by the zemindar, but if the disadvantages of the measure were weighed against its advantages, the good resulting from it would be more than counterbalanced by the evil that it would give rise to. As regards the ryot, the increased

facilities afforded him for borrowing would be a tool in his hands to work his own ruin by borrowing money on every possible occasion, such as marriage ceremonies and so forth. The phrase "which does not render it unfit for the purposes of the tenancy," in clause (a) of this section, is very vague, and ought to be properly defined, otherwise it will give rise to much litigation between landlords and tenants. No provision has also been made in the Bill for the registration in the landlord's sherista of transfers of occupancy holdings. Without such a provision, the landlord will entirely be in the dark as to who his tenant is. The Bill makes the occupancy holding virtually a *talook* and the occupancy ryot, a *talookdar*. With the large powers of sale and gift given to him, we do not see why the purchaser of an occupancy holding should not register his name in the landlords' sherista on payment of a moderate fee.

The advocates of the present Bill deny that its provisions are tantamount to redistribution of property in land. When this Bill becomes law, who is it that will get the compensations that are offered for acquiring land for public purposes such as railways, canals, &c. Will not the tenant come in for at least half the price, if not more? If this does not mean distribution of property, we do not understand what does.

The power of sub-letting in clause (e) will be resorted to chiefly to prevent the landlord from exercising his right of pre-emption. Sub-letting will be injurious to the actual cultivator, as the occupancy ryot could easily convert himself into a middleman.

Sections 56 and 61.—The acquisition of the right of occupancy by a new tenant immediately on his taking from the landlord a holding wherein the former tenant had a right of occupancy is indeed very objectionable. The landlord will have no interest to pay the highest amount offered for a holding, if he cannot let the land again as he desires, or if he cannot enhance the rent of the same holding. And it may often happen that having bought a tenure at the highest market price, he may have to wait for a year or more before he can let it at the same price or even at a reduction to a new tenant. Let us illustrate this by an example. A holding is put to sale by a mahajan and Rs. 200 is offered as the highest price. The landlord in exercise of his right of pre-emption pays this amount and buys the holding, but he may not be able to settle it over again at that price to a new tenant. Probably the land will remain uncultivated for a year, and he suffers loss of his rent meanwhile. The interest of the Rs. 200 at 12 per cent. per annum comes to Rs. 24. At last he is obliged to make over the holding to a new man, say, for Rs. 150. Here the landlord suffers a loss of Rs. 50 in the price, Rs. 24 in the interest or Rs. 74 in all, besides his rent for the year. Considering the risks undertaken by the landlord, it is but fair that he should be allowed to settle the land to the best advantage. And there is no reason why the new tenant who did not occupy the land for even a day, should get all the privileges of the previous occupant at the very moment he enters the land. The right does not attach to the land but to the holder thereof, and hence the new occupier cannot have the same privileges which the former tenant had.

We cannot conclude our observations on the subject of the occupancy right without noticing one or two important deviations in the present Bill from what was proposed by the Bengal Government in its own Bill. In the first place it was proposed (section 19, clause 3) that the sale of an occupancy right to a non-resident ryot will be valid only with the written consent of the landlord, and not otherwise. In the second place (section 21, clause *b*) no partial alienation of the holding will be valid without the written consent of the landlord. But both of these safeguards have been done away with in the Bengal Tenancy Bill. The first would to a certain degree prevent the right passing into the hands of men who, owing to their absence from the village, are not likely to turn out desirable tenants or good agriculturists. The second would preserve the holding from being divided into minute parts, the occupants of which would be too poor to devote themselves to the improvement of agriculture. But by far the most important objection to this sub-division is that it will lead to quarrel and litigation among the numerous co-sharers of the occupancy right. It is well known that the great majority of ryots in Bengal are Mahomedans. Under the Mahomedan law the property is inherited by all the sons, daughters, wives and other relations. Some of these—especially the daughters—live away in distant villages and do not share in the cultivation of the land. It frequently happens that these various members of a family do not agree among themselves. And the effect of this will be that any member living away and having no direct interest in the holding, will sell up his or her share to some one who is not friendly to the others. And this will lead to misunderstanding and quarrel. Is such a state of things likely to conduce to the peace and happiness of the cultivating class or to the feeling of security which the bestowal of rights in property (the avowed object of conferring the right of transfer) is likely to engender? Then, again, is this likely to facilitate the realisation of the zemindar's rent from the numberless co-sharers of a holding which the provision will create? If the resident occupiers are sued for arrears, they will say that such and such a person (perhaps living miles away) is part-owner and is responsible for part of the rent, though the holding stands in the name of one member of the family, as is usually the case. These difficulties should be well considered.

Section 59.—This section limits the enhancement to six annas per rupee, or to $\frac{1}{8}$th of the estimated average annual value of the gross produce. No restraint should be put on the freedom of contract. When contracts entered into by people in other matters are respected by the courts of law and sanctioned by the established usages of the country, there is no reason whatever why a contract freely entered into between a landlord and a tenant should be respected only when it binds the former. Then, again, the limit of six annas per rupee is one of several restrictions to enhancement of rent. The second restriction is contained in section 76, which provides that the enhanced rent shall in no case be more than double the existing rent. The

third is contained in section 77, which provides that the limit of enhancement will be reached by degrees in a number of years And the fourth is the limit that the enhanced rent shall not exceed $\frac{1}{5}$th of the average annual value of the gross produce in staple crops calculated at harvest time, the cheapest time in the year. Amidst so many restrictions it is easy to conceive that the landlord will get but small advantage, if at all, when he puts the legal machinery in motion for the enhancement of rent. Let us illustrate this by an example. Suppose the average annual value of the produce of a bigha of land is Rs. 12½ and the present rent of the ryot one rupee. Under this law the landlord can claim to enhance up to Rs. 2 annas 8, being $\frac{1}{5}$th of Rs. 12½. But he cannot expect to get more than double or Rs. 2. And even if the court should deem it to be fair, from the evidence before it, to give him the Rs 2, it cannot pass a decree for that amount, as section 59 provides that in no case shall the enhancement exceed 6 annas per rupee, or in other words, the landlord cannot get more than Re 1 ans 6. Hence it is evident that the landlord can never expect to get the full benefit of the provision of the law. For, even if the land should continue fertile, it would take, at this rate at least 50 years to get his 2 rupees 8 annas, for the rent once enhanced cannot be disturbed for 10 years, as provided for in section 78. So much for the justice of this provision.

Regarding the limit of $\frac{1}{5}$th of the average annual value of the gross produce, it may be said that it is a most arbitrary limit. Even the Rent Commissioners fixed the limit at $\frac{1}{4}$th of the average annual value of the gross produce. Many authorities could be cited to prove that rent in times anterior to the Permanent Settlement varied from $\frac{3}{4}$ths to $\frac{1}{2}$ of the gross produce. In the western districts of Bengal the rent still varies from $\frac{1}{3}$rd to $\frac{1}{2}$. Even in East Bengal, where land is let at what is called the *burga bhag*, half the produce is paid to the landlord. But if the landlord gives the seeds, he gets more than half In Behar the rent at present varies from half to nine-sixteenths of the gross produce. Under these circumstances, to fix the limit of enhancement to $\frac{1}{5}$th is very arbitrary and unjust The limit should be six annas of the average gross produce of land where money rent is paid, and half the produce where rent is paid in kind. The ryot is the best person to know which lands will yield him a profit and what rent he can afford to pay deducting the cost of cultivation. Hence any contract freely entered into by a ryot should be respected by the law.

Sections 62 to 73.—The procedure laid down in these sections for the preparation of a Table of Rates is very cumbrous, and will be very expensive and troublesome to both landlord and tenant. Clause (*c*), section 63, refers to "the maximum and minimum estimated average amounts of the gross produce" of each class of land. If the average is to be struck, why should there be two averages for each class? These fine distinctions instead of simplifying matters will create more confusion. For the same reason there should not be two rates—a minimum and a maximum—for each class of land as provided for in section 73 It is very doubtful whether a Table of Rates, prepared on the complicated lines laid down in the Bill, will be fair to the landlord; on the contrary, the probability is that in every case the Table will err on the side of over-leniency towards the ryot. It will be necessary not only to fix rates for each class of land in every part of a district, but also in every village in that part. Rates vary in each village, and it is impossible to fix a rate for even a tolerably large area The rates will remain in force for 10 to 30 years, but the land may deteriorate after 5 years. Is the tenant then to get a reduction? If he does not, he suffers. But if he does, he becomes liable to enhancement within that period. For, it would be unfair to give him reduction without making him liable to enhancement. In either case the fixed period of 10 or 30 years will be injurious to one or the other party. In respect to such matters the landlord and tenant should adjust their claims without interference from outside. Then, again, in most of the districts in Eastern Bengal, the Courts of Law have decided what are fair and equitable rates. Does the Legislature intend that the rates fixed by the High Court and adhered to both by landlord and tenant should be set aside by the revenue officer and the rates established since a long time after the expenditure of large sums of money should be altered at the caprice of such an officer? Then, again, the expenses to be incurred by Government, including the salaries of all officers employed down to the lowest peon, will be realized from both landlord and tenant, and the result will be financially disastrous to both. It should also be remembered that a Table will be of value in places which have been surveyed in detail. To prepare a Table before such a survey would be like putting the cart before the horse. Then, again, after incurring all the trouble and expense of preparing a Table of Rates, the landlord will have to bring as usual a suit in the civil court to determine under what class the land in question should be assessed. This means a good fight with the tenant over again. Why this double loss?

Section 70.—The limit stated in this section should not exceed 10 years. Considering the difficulties in the way of enhancement and the hard contest with the ryot at every step, it is but fair that the landlord should not be debarred from reaping any advantages which he may get on the clearest evidence and on the most undeniable facts

Section 71.—It is not clear why the ground of enhancement on account of the ryot is holding more land than he pays rent for, has been omitted from this section.

Section 83.—The preparation of annual price lists should be made by the Collector in consultation with, say, three assessors, who should be men having a knowledge of the country and its produce.

Section 87.—The provision of a settled ryot acquiring permanent right in basti land *not included in an occupancy tenure*, is unjust to the landlord. But the provision that he will not lose the right, though he may cease to be a settled ryot of the village or estate, appears to us quite incomprehensible. Nothing has been said as to how long the landlord will wait before

letting out the land left by the absconding ryot, and no attempt has been made to show any justification for so unjust a measure. Furthermore, the run-away ryot cannot be ejected from the land, though he may have broken the condition on breach of which he was, under the terms of the contract, liable to be ejected without compensation being paid to him. Is this fair?

The limit of 5 per cent. is also very unfair. This limit had been first fixed by the Rent Commission. Even Government paper yields 4 to 4½ per cent. and free of all costs. For land there is first the Government revenue to be paid, then the Road and P. W. cesses. Then there is the cost of collection and the difficulty of realizing it. Some consideration should also be made for outstanding balances and chances of litigation. After all this trouble and expense 5 per cent. is the highest that the landlord can look to as his rent. Is this fair?

CHAPTER VII.

The broad definition given of a settled ryot will include almost every ryot in Bengal, Behar and Orissa. If there be one in ten thousand who is not so, he would also in course of time get all the privileges of a settled ryot, which no landlord could prevent him from acquiring. The provisions for compensation for improvements and for compensation for disturbance are such as to make the position of an ordinary ryot in some respects more enviable than that of an occupancy ryot. These two compensations are to be given to him though he should have broken a condition for breach of which he was, under the terms of the contract, liable to be ejected. Hence to eject such a tenant would be out of the power of an ordinary landlord unless he is disposed through sheer *malice prepense* to incur an unwarrantable amount of expenditure in order to get rid of the tenant.

The breach of a stipulation relating which both parties have most willingly made an agreement, is an infringement of the landlord's right, and if in such a case the ryot is allowed compensation of such a heavy nature, it is simply punishing the landlord for seeking redress of wrong done to him, and rewarding tenant for committing the wrong. If a ryot does not appear or agree to pay the enhanced rent demanded (section 92), it will be more advantageous to him than to the ryot who agrees to pay the enhanced rent, for, if the case is not decided within ten weeks before the expiry of the year and the agreement is recorded in the year following, the ryot will have to pay the enhanced rent from the year next following the date of the agreement. In the case of the ryot who agrees before the expiry of the year to pay the enhanced rent, he will have to pay at that rate from the year immediately following.

Section 96.—This is very objectionable. Why should a ryot be entitled to claim all accretions to his holding as his own. If this be the law, half a dozen ryots of a village could claim a new *char* much larger perhaps than the village itself as their own. But when a civil suit is brought by the neighbouring landlord for possession of the land, who is it that will bear the cost of the suit—the ryot or the landlord? Is the landlord or the ryot to be made defendant?

Section 100.—The provisions regarding a better system of receipts and accounts are no doubt desirable, but the safeguards have been stretched to an unnecessary extent. The receipt is to contain so many facts relating to the holding that it will serve the purpose of a *pattah*, that is, it will have in it those facts and figures which a *pattah* usually has. This will not facilitate the collection of rent, but will throw such obstacles in the way of ordinary village patwaris or gomastas, that they will honour the rule more in the breach than in the observance thereof, and will oftentimes comit such blunders as to throw everything into confusion. Some simple facts connected with the rent of the holding should only be stated, such as the name of the tenant, the date of payment, the name of the landlord, the amount paid in the arrears and the amount paid in the current rent of the year, &c. We would therefore suggest that clauses (*f*) and (*g*) in section 100 be expunged as quite unnecessary in an ordinary receipt—especially as section 101 provides that, within three months after the expiry of each agricultural year, a statement of account showing these and other important particulars is to be delivered to the tenant by the landlord under a penalty. As a better system of accounts will have to be kept by the landlord under the provisions of this chapter than is at present in vogue, the landlord may be fairly entitled to a small fee for retaining a better staff of servants, and perhaps increasing the number of his amlahs in order to carry on this extra work. There is ample justification for this demand, as the landlord will be liable to a fine of Rs. 50 for non-compliance with this provision. When there are more co-sharers than one, the fee might be rateably divided among them. If the landlord is not to receive a fee, then the penalty should be withdrawn, as it will prove ruinous to many poor landlords, and will prove quite embarassing to others.

Section 103—Is objectionable, as the phrase "has reason to believe" is too wide, and would entitle all and every ryot to deposit the rent in court without tendering the amount, to the receiver of it. This would entail endless hardship on the landlord to recover the amount, and in every case he would have to incur some expense in recovering it, which would be a source of loss to him for no fault of his own.

In making a deposit under clauses (*b*) and (*c*) of section 103, the tenant need not even mention the names of those co-sharers who are entitled to receive the amount. And no penalty is attached to his wilfully withholding this information. In such a case how are the co-sharers to know that such a deposit has been made in their favour unless they retain a mooktear (in every court where rent might be deposited) to bring in such information. Is it within the power of every landholder to engage the services of agents for that purpose? We should therefore suggest that, when deposits are made under clauses *b* and *c*, the tenant should be bound

under penalty to give the names of the persons who, he has reasons to believe, are entitled to the rent, and then the officer should cause a notice to be served in the *tahsil kutchery* or in some conspicuous place in the village or estate.

Section 107.—Three years is too long a time. It should be six months.

Section 119.—Half the gross produce should be the limit instead of 5-16ths.

Section 129.—If a ryot is evicted from a holding in default of payment of rent, there is nothing in this section which will prevent his demanding compensation from the landlord. This is very unfair. This is encouraging a defaulter, while it is the duty of the Government considering the stringent sunset law to afford every facility to the landlord in the realisation of rent. It should be remembered that one of the primary objects of the revision of the Rent Law was to facilitate the recovery of arrears of rent, but the temptation to a defaulter in the shape of compensation is such that he will have no incentive to be punctual in his payments. There is nothing in the Bill to deter a tenant from wilfully withholding the payment of rent. On the other hand, he is ensured from loss likely to arise from any measures that the landlord may take by the heavy compensations to which he might lay claim.

Section 133.—If the landlord be willing to measure the land, we do not see why he should not be able to do so within ten years next following the date on which it was so measured. It will in no way be injurious to the ryot, while the landlord might require to do so for some useful purpose. This section should be expunged.

Section 140.—Six months should be about the largest time allowed in such cases.

Sections 142 to 148.—These are some of the most objectionable provisions of the Bill Co-parcenary is an institution in this country. There are few estates, tenures or under-tenures that are owned by single individuals. In the great majority of cases the co-parceners have separate management. The usual practice is for some co-parceners in a group to have joint collection and management separate from another group of co-parceners. Instead of meading matters and furthering the cause of peace, these provisions will be an instrument to harass and virtually to ruin the majority of landholders. Owners of infinitesimal shares and refractory tenants would be able to throw every estate into the hands of the Court of Wards by a simple application to that effect to the District Judge. No provision has been made for an appeal against the Judge's order, and his order, however unjust and arbitrary, will remain final and conclusive. The onus to show cause why they should not appoint a common manager, is on the defendants, and the applicant is not bound to adduce any proof in support of his assertions. There is also no appeal against the appointment of a manager, nor against an order refusing to remove him from office should any interested person apply for his removal on sufficient grounds.

Sections 166-187.—The restricted nature of distraint allowed in these sections will be worse than useless to a landlord. The procedure laid down is like an ordinary suit to recover arrears of rent. The full amount of court-fee will have to be paid, the application shall be signed and verified in the manner prescribed by the Code of Civil Procedure. The court may then admit the application or reject it. These several restrictions are against the object and spirit of the law of distraint, and hence no landlord would take recourse to it.

Section 157.—Three months' time should be allowed under this section.

Section 187.—No reason has been assigned why the local Government should have the power to suspend the provisions relating to distraint in any area it thinks proper. Probably the object is to prevent harassment and oppression of ryots by frequently or unnecessarily distraining their crops. If the Executive Government should retain the power to interfere when the landlords are bent on taking undue advantage, we do not see any reason why the existing law regarding distraint should be so distorted and modified as to make it practically valueless. Why should good landlords be deprived of this only method of speedy realisation of rents for the sake of the bad ones who could be easily checked by the local Government. As a matter of fact, distraint is never taken recourse to except under the most pressing necessity.

Sections 188-207.—With regard to the procedure for the realisation of rents the provisions in the present Bill are very much alike the existing law on the subject with a few minor alterations. Section 199 is new, but is not likely to be of any use, and will certainly be limited in its application. The ryot who disputes the plaintiff's claim is not likely to act so foolishly as to admit that the arrear is due to him. Such cases will be very rare, and will not be of any help to the generality of landlords. What would really facilitate the realisation of rents would be to provide for the absolute forfeiture of the right of occupancy on non-payment of rent either on the due date, or at the latest, on the fifteenth day before the last day of the next payment of the Government revenue, provided the arrear be established to the satisfaction of the civil court. Or let it be provided that the ryot should deposit in court the amount sued for before filing his defence if the suit be a contested one, though he might sue the landlord for damages should the claim turn out to be false or should the claim be for a larger amount than he is entitled to get. Without some such stringent provision, it is vain to hope that the ryot will be regular in his payments. Or it may be provided that any number of tenants might be sued in the same plaint, so as to reduce the cost of bringing such suits. In many instances the ryot in order to avoid paying the rent, puts in a disclaimer denying the title of the landlord to the land. These cases should be severely dealt with: section 79, clause (8) of the Bill of the Rent Commission runs thus:—Subject to the other provisions of this Act, a tenancy is determined as between the parties thereto by any of the following occur-

rences in the following cases respectively, that is to say, in the case of any tenant(8)—by disclaimer when in a suit to which his landlord is a party, the tenant disclaims such landlord's title and sets up an adverse title in himself or another, by matter in writing or reduced to writing by the court under the provisions of the Act or the Code of Civil Procedure, and such landlord elects within six months to treat such disclaimer as a forfeiture of the tenancy; provided that no such forfeiture by disclaimer shall be allowed in any case in which such tenant having been let into possession by such landlord can show that such landlord's title had expired or been defeated or annulled at the time at which such disclaimer was made, or not having been let into possession by such landlord can show that he admitted his title as landlord under a *bond fide* misapprehension or mistake. It is not clear why such a salutary provision has been left out.

Section 198.—The limit of Rs. 50 in clause (*b*) of this section is very high. This amount will cover the majority of rent suits, and as such cases will, in the first instance, be tried by a moonsiff, an appeal should be from his decision to the Judge or Subordinate Judge.

Section 202.—This section will enable a tenant to acquire rights which were never intended to be conferred on them. He has only to use the land in such manner or to render it unfit for the purposes of the tenancy, and when called upon by the landlord to repair the damage or pay "reasonable compensation," if the tenant choose to pay the compensation, his title to the land will be admitted and his possession confirmed. If this be the law, then anybody could take anybody else's land on payment of what is called reasonable compensation.

Section 208.—Clause (*f*) of this section should be omitted. This will frequently give rise to fraud, and will be a great injustice to auction-purchasers.

Section 210.—Section 201 is a confirmation of the circular order of the High Court published in the *Calcutta Gazette* in July 1880. The registered incumbrances can only be ascertained by a reference to the registers in the different sub-registry offices. These offices are scattered in different parts of the district, and visiting them involves so much waste of time and money that they operate as a serious bar against the execution of rent decrees. The poor class of landlords cannot afford to execute decrees on account of the costs to which they are subjected. As the indexes to these registers are kept in English, and English education has not extended into the interior of districts, the decree-holder finds it difficult to obtain the services of a person competent to examine the registers, and should he succeed in finding a person, he has to pay him a sum which cannot be included as costs in the execution of his decree. Let us consider the outlay which must be incurred before a decree for rent can be executed under this section. (1) The payment of fees in the several registry offices and the cost of obtaining copies of documents to enable the decree-holder to put in a correct affidavit, or he is certain to subject himself to the penalty of prosecution for perjury. (2) The cost of obtaining copies of road cess valuation papers in order to determine the value of the property to be sold. (3) The cost of making local enquiries to ascertain the number and rental of undertenures, &c. To the poorer classes of landlords who have expended their all in obtaining a decree, these costs are simply ruinous. Is it fair to throw such difficulties in the way of decree-holders who have satisfied the court that their claim is just and proper? If it is considered necessary that the existence of all incumbrances should be ascertained before a decree for rent can be executed, why should not the Registrar be required to furnish this information free of cost. If not, a moderate fee should be charged and the Registrars should be held responsible for the accuracy of the returns.

Section 215.—If occupancy holdings are also to be treated as tenures in such areas as the Local Government may, from time to time, by notification in the Gazette, direct, then the realization of rent will come to a perfect stand-still. It is not clear why the local Government should have this power reserved to itself. The Bill is only one-sided in its character, and favours the tenant unduly in his dealings with his landlord, but the *acme* of injustice is reached if this discretion is to be given to the local Government.

No. 21, dated the 20th September, 1883.

From—Raja Promatha Natha Roy Bahadur, of Digbapatia,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to forward herewith my notes on the Bengal Tenancy Bill, and I beg you will do me the favour to lay them before His Excellency the Viceroy.

Notes on the Bengal Tenancy Bill.

I, as a zamindar of Bengal, cannot help feeling alarmed at the unjust provisions of the Bengal Tenancy Bill introduced into the Legislative Council of His Excellency the Viceroy. As far as I am aware, this Bill has been brought forward, not in response to any application from the tenants for an enlargement of their existing rights, but because the landlords have been praying since some years for an alteration in the existing law to make fair enhancement of rents practicable, and their realization speedy, and successive Lieutenant-Governors have promised to grant both of these two prayers. It however, instead of altering the existing law in these two respects in such a way as would make it useful to the landlords, proposes to curtail several of their existing right for the benefit of the raiyats, and, as I shall show in paragraph 11 of these notes, to grant rent-free to the tenants all lands of the rents of which

they have been able to defraud the landlords for some time past. But the words, which have been said by several of our rulers and legislators since the introduction of the Bill into the Council have alarmed me more than the Bill itself, and they have no doubt that the Government dislikes the landlords as a class. I am heartily willing to support any stringent provision for stopping the levy of illegal cesses, if our rulers would be disposed not to make fair enhancement impracticable. But I beseech them to consider whether it is just and wise to make no distinction between the innocent and the guilty, and to punish the whole class by making the law too harsh for everybody.

2. The landlords of Bengal and Behar, as a class, though not numerically large, constitute a very important and useful section of the community, and they are neither the creations of Lord Cornwallis nor of any other British Governor General of India, as some people suppose; but they claim their existence from a date centuries before the commencement of the British rule in India; and it will be unwise and unjust for the Government to curtail the rights they have enjoyed now for hundreds of years, and which have been solemnly confirmed to them by the Permanent Settlement and the Royal Proclamation of 1858.

3. If, however, our rulers think the landlord class as not undeserving of fair treatment, I am sure their sense of justice will oblige them to reconsider the Bill, and to make it really fair and equitable to both the sections of the landed class; and, on this belief, I now proceed to discuss some of the important sections which have yet struck me as unjust, and therefore objectionable from the landlord's point of view, preserving as far as possible the same order in which they are arranged in the Bill.

4. *Section 15.*—This section, unlike every other law we have, instead of putting on the shoulders of the tenant the burden of proving his allegation that he has paid the rents of his tenure or holding at a uniform rate since 1793, places upon the landlord the onus of disproving this allegation, or rather of proving the contrary, if he (the tenant) can only show that the rate of his rent has not been changed for the last twenty years. This provision has also been objected to by a large number of people, both official and non-official, since the publication of the Rent Commission's Bill and Report; and Mr. Reynolds, in his memorandum, dated the 21st February, 1881, appended to the Bill he prepared under directions from the Bengal Government, admits the soundness of those objections, and the difficulty of the landlords in these terms:—"Allowing all due weight to the arguments of the Commission, it is to be remembered that the presumption was first introduced by Act X of 1859, and that it was then necessary for the tenant to prove a uniform rate from 1839. It is now only necessary to prove such uniform payment from 1861. As there is reason to think that rent-receipts have been much more regularly given, and much more carefully preserved, during the last 20 years than during the 20 years which preceded them, it seems to follow that the lapse of time has made it more and more easy to raise the presumption and more difficult to rebut it. Nor can it be denied that auction-purchasers labour under a special grievance in this matter." though Mr. Reynolds, in his speech in Council on the 12th March last has modified his former views in the belief that a landlord will always be able to get out of his difficulties in such cases by applying for a record-of-rights under Chapter XII of the Bill, I fail to see the force of this reasoning, for I am sure the tenant will not hesitate to take advantage of this section to make an incorrect allegation of his *isthumurari* right before the officer preparing the record, and then that officer shall have no help for it but to throw the whole burden of the proof on the landlord, in the same way as a Civil Court does now. True, this provision about presumption is our existing law, but it is nevertheless an unfair one; and, when the law is being altered for the benefit of the ryots, I think any provision which is unduly harsh towards the landlords should be altered also. I therefore beg our legislators to either omit this unjust section altogether, or at least to restore the shape which was given to it in the Bill by Mr. Reynolds.

5. *Section 17.*—I believe that, to prevent the meaning of this section being misunderstood, the words "if the rate of rent have not been altered thereby" which exist in the Commission's Bill, the Bill prepared by Mr. Reynolds under the direction of the Government of Bengal and Digest, should not be omitted.

After *section 31* and before *section 32* I propose the insertion of a section to entitle a landlord to demand and receive in all cases a security from the transferee or the successor of not less than half the annual rent. When it is proposed to give to all permanent tenure-holders the advantages now enjoyed by patnidars in regard to the registration of their tenures, I think it is only fair that landlords should be given the same privileges about demanding and receiving security which a zamindar now has when a *patni* under him is transferred by sale, bequest or inheritance. This provision is very necessary, since, these tenures not being liable to summary sales like the patnis, the arrears together with the costs of realizing them sometimes grow too large to be fully covered by the sale-proceeds.

7. *Sections 45 and 47.*—For the sake of convenience, I take the two together. These sections propose to give to all ryots, whether *khudkast* or *pykast*, who have held lands in a village or estate for twelve years or more, the new status of settled ryots of that village or estate, and to confer upon all such ryots the right of occupancy in regard to any ryoti land they shall hold, whether they paid any rent for it or not, and even if they might have entered upon it the day before. The payment of rent for a plot of land is an essential necessity under the present law for the accrual of the right of occupancy in regard to that plot, and even the Rent Commissioners, the majority of whom are well known to be very friendly to the ryots, did not propose to do away with this condition, very necessary for the protection of the right of the landlord class. This alteration of our present law would further confer the right of occupancy upon the majority of the *pykast* tenants who hold from year to year

and who do not consider this right of any value at all, as they abound now only in places where there is a greater demand for tenants than for land. Under the present law, none of these ryots has acquired an occupancy-right to any particular plot of land in the village, though many of them might have held lands in it for 12 years or more; because, there being no certainty that all the tenants who have come in this year from remote places will also come in the next: those who at the beginning of each season come first are first served; hence very few of these ryots can show uninterrupted possession of the same fields for any number of years. A landlord now therefore always can, and he often does, give these holdings over to new settlers whenever he finds an opportunity of reclaiming some portion of his waste-lands by so doing; for a new settler would not, and could not, take up waste-lands, unless he could secure a proportionate quantity of land which had been under cultivation. But, if sections 15 and 47 were passed into law in their present forms, a great check would be put to the reclamation of waste-lands, and the landlords shall suffer a great loss thereby. Besides, the landlord would suffer material injury in another way, namely, that many of these *pukast* cultivators having thus held lands in the village for 12 years or more, they shall now acquire occupancy-rights to the plots they have cultivated this year, though, as it often happens, they would not come to claim their rights again; but, all the same, the landlord shall have to refuse every one of these plots to a new ryot who might come first and like to take up some of them next year; consequently, he shall have to lose the whole of his next year's rent on these holdings, as it is well known that it is impossible to realize rents from these ryots if they have no crop which might be distrained or attached. Under these circumstances, I must object to these sections, and I venture to add that to consider one of this class a settled ryot of the village or estate is quite foreign to our traditions. Even the Bill prepared by Mr. Reynolds under direction from the Bengal Government did not propose an extension of the occupancy-right such as this.

8. *Section 50, clause (f).*—It proposes to make the occupancy-right transferable by sale or bequest, without even any check against a holding being broken up piecemeal in the course of the transfer—a provision considered desirable in both these cases by the Select Committee on Mr. Mackenzie's Bill to protect the landlords from needless inconvenience and annoyance. I regret to see several officials in high position (even the Hon'ble the Law Member included) believe that this is at present held to be the custom "throughout a very large portion of the area to which the Bill applies." If they will ascertain by enquiry the total number of holdings transferred from one family to another within a certain period, and compare it with the number transferred by sale or bequest, they shall find that the latter class of transfers bears a very small proportion to the former, and that the provision would be a novelty as far as the majority of our districts are concerned. This proposition, which is intended to make a substantial addition to the privileges of the ryots by taking away something equally substantial from the rights now enjoyed by the landlords, has already been discussed a good deal by the public both from a landlord and a ryot's point of view. Whether this new right will practically benefit the ryots or not, it is beyond my province to discuss here. But, if this clause be passed into law, (1) the landlords shall be deprived of the power they now have to keep new hostile tenants out of their properties; (2) the income they now derive from the nuzzurs which they get by re-letting out the profitable abandoned holdings shall be entirely lost to them; as all such holdings then shall be sold and not given up by their holders; (3) a lot of unprofitable holdings, which nobody would care to buy, shall come back to the landlord's hands and remain there, thus depriving them of a portion of their income from rents. Such holdings do come to their hands often, but now the better class of them come also; and by breaking up the old holdings when necessary, and forming new ones comprised of good and bad plots, a landlord can almost always let out every inch of his property, which advantage he shall be deprived of hereafter. The following five sections certainly enable a landlord to meet inconvenience No. 1 if he be a rich man and capable of buying up his tenants whenever they might be disposed to sell away their holdings, but not otherwise, while Nos. 2 and 3, as I have shown above, would surely bring heavy pecuniary losses to the landlord class. When this question was originally taken up by Government, it proposed to give to the landlords facilities for the speedy realization of their due and a law to ensure fair enhancements of their rents as compensations for this new right which would be given to the ryots at the landlord's expense; but, as this Bill does not intend to give them the two advantages named above in a way likely to better their present position I must very respectfully, but strongly, object to this new measure.

CHAPTER VI, SUB-CHAPTERS A, B, C, D, AND E.

9. I take up all these sub-chapters together, in order to be able to show in a convenient way my reasons for the additions and alterations I am going to propose to some of their sections which give the rules as to how the money-rents of occupancy-rights shall be settled by Government officers and, in cases of amicable enhancements, the limits which the law shall not allow the rents to exceed. Act X of 1859 virtually made the occupancy-ryots co-proprietors with the landlords, and this Bill proposes to confer upon them (the tenants) what little is now wanting to make that right complete. If, after having brought things to this state, the legislators do not say definitely what is to be the share of each party in the income derived from the land, or at least how far one party can advance and the other recede, solely because the existing rents are either lower or higher than that share of the produce from the soil, it is only natural they shall quarrel; and, if the

law would not give the landlords what in fairness they ought to get, and what they used to get not many years ago, it is quite as natural that, as long as they exist, they shall try to secure their fair share by means other than the law, specially when it is seen that the law-abiding are in a worse plight than the less scrupulous. If the legislature, or rather the Government, does not want that the rents of the occupancy-ryots should be enhanced, it is better to say so at once and in plain words than to hold out hopes to the landlords of better things and then to deny them the fulfilment. The High Court ruling laid down in *Thakurani Das'* case, and based upon the existing law, has been universally condemned as unworkable for the purpose of restoring even that proportion which the rent bore to the gross produce of the soil before the time the prices of produce rose, and, therefore, it has always been cried against by the landlords as unfair to them. If our rulers did not know this before, they know it very well now, from the letters and notes submitted to them by persons having practical experience on the subject since the publication of the Rent Commission's Report and Bill; and I fail to make out why, after this knowledge, the Government should persist, as it does in this Bill, to lay down this case-law as the rule to be observed by rate-table makers and courts to determine what enhancements of the rents of occupancy-ryots should be allowed. When rents are paid in kind, as far as I am aware, they are everywhere adjusted now according to defined shares of the gross income derived from the land; and everybody, even the Government, has acknowledged that a certain share of the gross produce should be the limit beyond which money-rents also must not be enhanced, but I cannot see why, Government should hesitate to allow an enhancement up to that share of the gross produce simply because of the existing rent being below it; and this is the law for which the landlords have always been petitioning. Some of the friends of the ryots object to the principle of enhancement on the grounds that it will raise the rents very high all on a sudden, and that, because of the existence now of a difference in the shares, or rather in the proportions, of the rent with the gross produce in the different tracts of this province, any definite share, if fixed by law, would be unfair. Now, this Bill provides that the enhanced rent shall not be more than double the former rent; and, from my personal experience in the zamindari business, I can say that this rule is often followed in amicable enhancements; and not in a few cases of individual jamabandis the enhanced rents go up to that maximum. I therefore think this provision, with that about ten years' rest, meets the first objection. In regard to the second, I fail to see its force, as it can be proved by historical evidence that in old times the rents bore in every part of the province a uniform proportion to the gross average produce of the soil, and our laws have only latterly created the difference. I do not therefore see what harm can there be if after some more years the porportion be uniform again, the rights of the landlords as also of the occupancy-ryots being the same everywhere throughout the province. Then comes the question, what should that share of the gross produce be up to which the landlords shall claim enhancement and no further? The Rent Commission, of which the declared friends of the royts were the prominent members, proposed that rents should not be allowed to go beyond a fourth share of the gross produce; but the landlords have been claiming a higher share, because they are fully entitled to what the Government and they themselves were receiving at the time of the Permanent Settlement, when the Government made over to them its rights to the future increase of the income from the land for a fixed revenue; and these shares together come up to very near three-fifths of the gross produce (*vide* the Fifth Report from the Select Committee on the Affairs of the East India Company, Vol. I, page 18). However, I believe in regard to staple crops they would now gladly accept even the fourth share of the gross produce of the soil, in order to avoid the worse fate proposed for them by this Bill, if they are allowed to enchance the rent up to that share where it is less because it is less. Concerning special crops, to grow which it is necessary for the ryot to undergo more than ordinary labour and expense, I think the landlords should be content to accept a much smaller share of the gross produce, say, one-sixth. With regard to the safeguard that the enhanced rents shall not on any one occasion be more than double the existing rent, I have already said that in amicable enhancements this rule is generally followed now; but cannot see why this Bill declares that in future, in the case of an amicable enhancement, this maximum should be reduced to six annas per rupee of the former rent. If the tenant be expected to feel no great hardship to pay double after an expensive law-suit, why should it be considered hard for him to pay the same amount of rent when he has incurred that expense; and I fail to see why a landlord, because he feels disinclined to go to court against his tenants, should be denied the advantages which the Government wants to give to his more litigious brother. As far as I can see, the result of this law would be to drag into court friendly landlords and tenants in spite of their will, and to subject them to perfectly unnecessary expenses for getting settled what they were ready to settle and they would have settled amongst themselves but for this law. About the other provision mentioned in section 59, sub-section 2, that the Revenue Officer shall not register the contract, without which there can be no amicable enhancement, before he is satisfied that the enhanced rent has not exceeded that share of the gross produce beyond which enhancements must not go, I admit the reasonableness of a check against the *jama* exceeding the limits fixed by law even by an amicable enhancement, but the question is whether that purpose cannot be equally served by adding another sub-section authorizing the tenant, in case the landlord refuses to correct the mistake, to petition the civil court, within one year of the execution of the contract, to declare it null and void, if the amicably enhanced rent should be found to exceed the share of the gross produce fixed by the law as the limit to enhancement. The provision as it stands will make amicable enhancement simply impossible, for it will take a long time and a good deal of bother to satisfy the registering officer that the enhanced *jama* has

not exceeded the share of the gross produce of the holding up to which the landlord is entitled to enhance, especially if the holding be situated in a part of the country for which no Revenue Officer has prepared a Table; and everybody who has any practical experience of this business knows that a tenant would not stand all this bother and loss of time in order to be bound to pay a higher rent for the benefit of his landlord. If Government should feel disposed to adopt the principle of shares in regulating enhancements, I think abatements should also in fairness be regulated according to that principle. I mean an occupancy-ryot should be entitled to an abatement of his rent to a certain share of the gross produce of his holding below which rents shall not be abated because the rent exceeds that share. Now, what that share should be below which there shall be no abatement, I have already mentioned that, according to the Fifth Report from the Select Committee on the Affairs of the East India Company (Vol. I, page 18), the ryot's share at the time of the Permanent Settlement was two-fifths of the gross produce of the soil, while Elphinstone, in his History of India (page 17), says, "a country is reckoned moderately assessed where he (the Sovereign) takes only one-third," and again, in page 475, when treating of the revenue-system of Akbar, he says, on the authority of the Ayen-i-Akbari, "the land was divided into three classes, according to its fertility, the amount of each sort of produce that a *bigha* of each class would yield was ascertained, the average of the three was assumed as the produce of a *bigha*, and one-third of that produce formed the Government demand." Of course the remaining two-thirds were left to be shared by the ryots and the zamindars, of whose (the latter's) existence at that time there are proofs. I therefore believe that nobody can call it unfair if ryots were allowed to claim an abatement down to one-third share of the gross produce in staple crop and one-sixth in special crops, but not lower, if the rents exceeded that share of the gross income of their holdings. Before I conclude my remarks on these sub-chapters, I must respectfully enter my protest against the new proposition in section 79, sub-section (2), as in the present state of the official feeling towards the landlords, there cannot be two opinions that the discretion will be exercised against that class. For these reasons I propose that—

In section 59, sub-section (2), the words "six annas per rupee greater," in lines 3 and 4, be omitted, and replaced by the word "double."

The words in this sub-section, from "or more" in the 4th line to "the harvest time," be omitted, and another sub-section added to this section to enable an occupancy-ryot to petition the civil court, within one year of the execution of the contract, to declare it null and void, if he find that the *jama* as amicably enhanced exceeds the fourth share of the gross produce of his holding, and the landlord declines to cancel the contract amicably when asked to do so.

In section 63, clause (6), the words from "or the" in the first line to "equitably" in the second be replaced by the words "of rent which according to one-fourth of the gross produce be."

The whole of section 64 with the proviso be omitted.

In section 74, sub-section (1), the words "on one or more of the following grounds, namely," at the foot of this sub-section, be replaced by the words "of any land on the ground that it is below one-fourth share of the gross produce of such land;" and the grounds (1), (2) and (3), with illustrations of ground (1), be omitted.

In connection with illustration (*b*), I here beg to mention that, in my zamindari experience, I have never known a ryot receiving a reduction of rent because some ancestor of his held the jote at the time of the Permanent Settlement; the *hajats*, as these reductions are called in my part of the country, are only given to the *pradhans*, or headmen, according to their status in the village, or for services their families have done to the landlord's family.

In section 75, the words "the 2nd or 3rd of the grounds," in lines 1 and 2, be replaced by the words "the ground." In the same section, clause (*c*), the proviso be omitted.

In clause (*d*), the words "one-fifth," in the second line, be replaced by the words "one-fourth."

A separate section be inserted after this to the effect that nothing in this chapter shall debar a ryot from obtaining a reduction of rent from that at the prevailing rate of the village to which his family is entitled.

In section 79, sub-section (1), the words from "either" in line 5 to the word "namely" in line 7 be replaced by the words "his horticultural or agricultural lands, on the ground that, for causes beyond his control, the fertility and the prices of produce having fallen, his rents have become higher than one-third of the gross produce of such lands;"

the grounds (*a*) and (*b*) be omitted;

and in sub-section (2), the words "it thinks fair and equitable" at the foot be replaced by the words "would make it equal or as near as possible to one-third of the gross produce of the land."

10. *Section 93, sub-section* (2), *clause* (*b*), *and section 119.*—These are proposals to virtually deprive the landlords of the right they have always possessed to eject at their will a tenant who has not acquired the right of occupancy. They limit the enhancement of the rent of a ryot of this class to five-sixteenths of the gross produce, and give him the privilege of throwing up his holding and obtaining a heavy compensation if he did not choose to pay an enhancement within that limit, even if that increase were to make the rent equal to what is paid by an occupancy-ryot of the village. These provisions are, in my humble opinion, very unjust, and therefore I must respectfully but strongly protest against them.

11. *Section 96, sub-section* (*1*), *clause* (*a*).—The third ground of enhancement of the rents of occupancy-ryots according to Act VIII of 1869 (B.C.) is that "the quantity of land held

by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him." This clause, therefore, though it empowers the landlord to successfully claim an enhancement if since the last measurement a ryot has added to his holding lands which then did not belong to it, does not meet cases where the holdings were under-measured at the last *jareep* (measurement). This alteration of our present Statute was proposed in section 22, illustration (*c*) of ground (2) of the Rent Commission's Bill and the same of the Bengal Government Bill, and it was strongly objected to by the public on both these occasions. If Government would only consider this matter thoroughly, they will be able to see that, unless it was under-measured at the former survey, a holding cannot possibly be found in the subsequent one to exceed the area it was put down for last time, if no new lands have been added to it since, and if the two measurements are done by the same standard poles or chains. They will also be able to see that the lands could not have been under-measured without either a mistake or a collusion between the ryots and the landlord's amin (surveyor). Under these circumstances, this provision will do a gross injustice to the landlords, who are as much entitled to protection as the occupancy-ryots, by encouraging the tenantry to commit crime and awarding to them rent-free all lands of the rents of which they have been able to defraud their landlords for a certain number of years. I do not know what have induced Government to propose this alteration in our present Statute, which is supported by the custom of the country and the High Court ruling in the case of *Prankissen Bagchee* versus *Monomohini Dassi* (XVII W. R., page 34); but I know that, unlike the *mukari* tenures or lands conveyed by sale, the occupancy and the other ryoti holdings have not hitherto been carefully measured as a rule, because, not expecting an alteration in the existing law such as is now proposed, the landlords have not hitherto cared to spend a lot of money for this purpose, and that therefore this present, and I venture to say unjust, proposition, coming, as it does, without a previous warning, will, if passed into law, be very injurious to the landlords; and as such I most respectfully but very strongly protest against it.

12. *Section 103, sub-section (1), clause (a).*—This is another proposal to alter the existing law to the disadvantage of the landlord. According to the present law, before he is allowed to deposit his rent, a tenant has got to swear that he offered to pay it to the landlord's agent and he (the agent) has refused to accept the money. The fear of being prosecuted for swearing falsely has hitherto obliged many a hostile tenant to pay his rent to the tahsildar; but, if this proposal should become law, that wholesome fear would be removed, and every hostile tenant will deposit his rent into Court just in order to harass the landlord. Anybody acquainted with the practice of our Courts can well conceive the costs, trouble and annoyance a landlord must go through to take out the rents the tenants have deposited for him. When the landlord's agent is in the village, and he often is there, the trouble of going to him or sending a man to him to offer rents is little or nothing; and, even if he be away, the tenant cannot undergo any great trouble, loss or risk in offering payment of his rent to the landlord himself, now that the post-office money-order system can be taken advantage of almost everywhere. Under these circumstances I beg Government to let the law remain as it is.

13. *Section 140.*—According to our custom, a holding is considered abandoned if the tenant leave his village or the landlord's estate for good even if there be no arrears of rent due from him. This custom, supported as it is by several High Court rulings, enables the landlord to make timely arrangements for the cultivation of the holding, and saves him from any loss of rent, unless the holding be such as nobody would care to take up. But if this section should become law, a landlord must lose one whole year's rent before he will gain the right of re-letting the holding, for which he shall have to pay the revenue or the rent to the superior proprietor all the same; and everybody who has any experience in zamindari work knows quite well that it is hopeless ever to realise this arrear from the old tenant who has abandoned his holding. For these reasons, I most humbly protest against this proposal.

14. *Section 151, sub-section (2), clause (a).*—I propose the insertion of the words "or a single landlord" after the word "landlords" in the second line of this clause, because there is many a landlord who singly owns a large tract of the country, and who, without an alteration such as I purpose, would not be benefited by this clause, though he may have a very large number of tenants to deal with.

15. *Section 164, sub-section (2), clauses (a) and (b).*—These two clauses are superfluous after the provisions made in section 151, (sub-section (2), clauses (*a*) and (*b*), and I therefore think they should be omitted.

16. *Section 166.*—As a rule, a landlord has recourse to distraint only when he sees that the realization of his dues would be very difficult after the tenant is able to sell away the crops or take them beyond reach of the landlord, and in a great many cases it is very difficult, especially in regard to *boro* or such other holdings, the area of which is determined after the crop is ready, when the tenants are *pykasthas* paying their whole year's rent in one instalment, before they go away with their profits to their distant homes, about which the landlords know nothing. This section, therefore, cannot and shall not help the landlord to realize his dues, unless there be a provision in the law binding the tenant under penalties neither to sell away the crops nor to remove them beyond the village or estate without the written consent of the landlord till one month is over after the instalments on those crops fall due. The crops are now the only security a landlord has for the realization of his dues, and I must object to the proposed alteration of our existing law without a provision such as I mention.

17. *Section 186.*—A landlord generally living away fom his estate has no opportunity of knowing whether the rents by the receipt of which he has been benefited have been realized by his *tahsildar* in the ordinary way or by illegal distraint. I believe therefore that, if this section should pass into law, it shall put into difficulties many an innocent landlord. Besides